2853

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, a corporation, BOSTON & MAINE RAILROAD, a corporation, CENTRAL NEW ENGLAND RAILWAY COMPANY, a corporation, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, a corporation, THE MICHIGAN CENTRAL RAILROAD COMPANY, a corporation, ERIE RAILROAD COMPANY, a corporation, CHICAGO & ERIE RAILROAD COMPANY, a corporation, THE CANADIAN PACIFIC RAILWAY COMPANY, a corporation, THE MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, a corporation, SPOKANE INTERNATIONAL RAILWAY COMPANY, a corporation, CHICAGO & NORTHWESTERN RAILWAY COMPANY, a corporation, THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a corporation, and J. M. DICKINSON, as Receiver thereof, BOSTON & ALBANY RAILROAD COMPANY, a corporation, UNION PACIFIC RAILROAD COMPANY, a corporation, OREGON SHORT LINE RAILROAD COMPANY, a corporation, OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation,

Plaintiffs in Error,

vs.

BALLOU & WRIGHT, a corporation,

Defendant in Error.

TRANSCRIPT OF RECORD

On Writ of Error to the District Court of the United States for the District of Oregon.

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, a corporation, BOSTON & MAINE RAILROAD, a corporation, CENTRAL NEW ENGLAND RAILWAY COMPANY, a corporation, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, a corporation, THE MICHIGAN CENTRAL RAILROAD COMPANY, a corporation, ERIE RAILROAD COMPANY, a corporation, CHICAGO & ERIE RAILROAD COMPANY, a corporation, THE CANADIAN PACIFIC RAILWAY COMPANY, a corporation, THE MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, a corporation, SPOKANE INTERNATIONAL RAILWAY COMPANY, a corporation, CHICAGO & NORTHWESTERN RAILWAY COMPANY, a corporation, THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, a corporation, and J. M. DICKINSON, as Receiver thereof, BOSTON & ALBANY RAILROAD COMPANY, a corporation, UNION PACIFIC RAILROAD COMPANY, a corporation, OREGON SHORT LINE RAILROAD COMPANY, a corporation, OREGON - WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation,

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Plaintiffs in Error

——vs.——

BALLOU & WRIGHT, a corporation,

Defendant in Error

Names and Addresses of the Attorneys of Record.

MR. H. A. SCANDRET, MR. W. W. COTTON and MR. CHARLES E. COCHRAN, Wells-Fargo Building, Portland, Oregon, for the Plaintiffs in Error

MR. WILL H. BARD, Pittock Building, Portland, Oregon, and MR. JAMES E. FENTON, Call Building, San Francisco, California, for the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon—ss.

To BALLOU & WRIGHT, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein New York, New Haven & Hartford Railroad Company, et al., are plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 5th day of May, in the year of our Lord, one thousand, nine hundred and sixteen.

R. S. BEAN, *Judge.*

Due and legal service of within Citation on Writ of Error by a certified copy thereof, prepared and certified to be such by C. E. Cochran, one of the attorneys for plaintiffs in error, is hereby admitted at Portland, Oregon, this 5th day of May, 1916.

WILL H. BARD,
Of Attorneys for Defendant in Error.

Filed May 5, 1916. G. H. MARSH, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, a corporation, et al.,
vs *Plaintiffs in Error,*
BALLOU & WRIGHT, a corporation,
Defendant in Error.

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America.

To the Judge of the District Court of the United States for the District of Oregon:

GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Charles E. Wolverton, one of you, between Ballou & Wright, a corporation, Plaintiff and Defendant in Error, and The New York, New Haven & Hartford Railroad Company, a corporation, Boston & Maine Railroad, a corporation, Central New England Railway Company, a corporation, The New York Central & Hudson River Railroad Company, a corporation, The Michigan Central Railroad Company, a corporation, Erie Railroad Company, a corporation, Chicago & Erie Railroad Company, a corporation, the Canadian Pacific Railway Company, a corporation, The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a corporation, Spokane International Railway Company, a corporation, Chicago & Northwestern Railway Company, a corporation, The Chicago, Rock Island & Pacific Railway Company, a corporation, and J. M. Dickinson, as Receiver thereof, Boston & Albany

Railroad Company, a corporation, Union Pacific Railroad Company, a corporation, Oregon Short Line Railroad Company, a corporation, Oregon-Washington Railroad & Navigation Company, a corporation, Defendants and Plaintiffs in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE,
Chief Justice of the Supreme Court of the United States this 5th day of May, 1916.

(Seal of the U. S. District Court)

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.
By F. L. BUCK, Deputy.

Allowed by R. S. BEAN, Judge.

Service of the above Writ of Error made this 5th day of May, 1916, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court, a duly certified copy of said Writ of Error.

G. H. MARSH,
Clerk of the District Court of the United States for the District of Oregon.

By F. L. BUCK, Deputy.

Filed May 5, 1916.

G. H. MARSH, Clerk,
United States District Court, District of Oregon.
By F. L. BUCK, Deputy Clerk.

In the District Court of the United States for the District of Oregon.

March Term, 1915.

BE IT REMEMBERED, That on the 3rd day of June, 1915, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit:

COMPLAINT.

Ballou & Wright, a corporation,

Petitioner,

vs.

The New York, New Haven & Hartford Railroad Company, a corporation,

Boston & Maine Railroad, a corporation,

Central New England Railway Company, a corporation,

The New York Central & Hudson River Railroad Company, a corporation,
The Michigan Central Railroad Company, a corporation,
Erie Railroad Company, a corporation,
Chicago & Erie Railroad Company, a corporation,
The Canadian Pacific Railway Company, a corporation,
The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a corporation,
Spokane International Railway Company, a corporation,
Chicago & North Western Railway Company, a corporation, and J. M. Dickinson as Receiver thereof,
The Chicago, Rock Island & Pacific Railway Company, a corporation,
Boston & Albany Railroad Company, a corporation,
Union Pacific Railroad Company, a corporation,
Oregon Short Line Railroad Company, a corporation,
Oregon-Washington Railroad & Navigation Company, a corporation,

Respondents.

Comes now petitioner, Ballou & Wright, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business at the City of Portland, in Multnomah County, and State of Oregon, and a citizen of, and domiciled in, the said State of Oregon, and for its cause of action against said respondents, The New York, New Haven & Hartford Railroad Company, a corporation, Boston & Albany Railroad Company, a cor-

poration, The New York Central & Hudson River Railroad Company, a corporation, The Michigan Central Railroad Company, a corporation, Chicago & North Western Railway Company, a corporation, Union Pacific Railroad Company, a corporation, Oregon Short Line Railroad Company, a corporation, Oregon-Washington Railroad & Navigation Company, a corporation, alleges:

I.

That the said Ballou & Wright, is now, and was at all of the times herein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business at the City of Portland, in Multnomah County, State of Oregon, and as such corporation, is now, and was at all of the times herein mentioned, a citizen of, and domiciled in, the said State of Oregon.

II.

That the respondent, Union Pacific Railroad Company, is now, and was at all of the times herein mentioned, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, with its principal office and place of business at Salt Lake in the said State of Utah, and as such corporation, it is now, and was at all of the times herein mentioned, a citizen of, and domiciled in, the said State of Utah.

III.

That the said respondent, Oregon Short Line Railroad Company is now, and was at all of the times herein mentioned, a corporation, duly organized and existing

under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake, in the said State of Utah, and as such corporation, it is now, and was at all of the times herein mentioned, a citizen of, and domiciled in, the said State of Utah.

IV.

That the said respondent, Oregon-Washington Railroad & Navigation Company, is now, and was at all of the times herein mentioned, a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal office, and place of business, and with its principal operating office at Portland, Multnomah County, State of Oregon, and as such corporation is now, and was at all of the times herein mentioned, a citizen of, and domiciled in, the said State of Oregon.

V.

That the said respondent, Oregon-Washington Railroad & Navigation Company, was at all of the times herein stated, the terminal company which in conjunction with the said other respondents, moved the shipments hereinafter mentioned.

VI.

That each of the other respondents above named is now, and was at all of the times herein mentioned, a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with its principal office and place of business therein, but the petitioner does not know and is unable to state the particular State of the United States wherein

either of said other corporations was organized, or wherein it was at any time, or is now existing, or the particular State of which either of the said other respondents was at any time, or is now a citizen, or in which it was at any time or is now domiciled, but petitioner alleges: That each of the said other corporations at all of the times herein stated did business, as a corporation, and in its corporate name, with the said petitioner, and each of the said other respondents should and of right ought to be required either to set out fully and particularly in its answer to this petition, the particular State wherein it was incorporated and organized and wherein it is now existing, and the place of its principal office and business and its citizenship and domicile, or each of the said other respondents should and of right ought to be estopped from denying its corporate existence, or from requiring petitioner to allege either the place where either of said other corporations was incorporated, or was at any of the times herein stated, or is now existing or the place of its principal office or business or its domicile or citizenship; or in lieu thereof, the said petitioner should be permitted upon leave of the Court, first obtained, when all of the said facts are discovered to make all necessary allegations touching said matters. That J. M. Dickinson is now and was at all the times herein stated the duly qualified and acting receiver of the said Chicago, Rock Island and Pacific Railway Company.

VII.

That said petitioner is now, and was at all of the times herein stated, as such corporation, engaged in the business of a wholesale and retail dealer in, and in the

sale of, motorcycles and other vehicles and merchandise, with its principal office and place of business at the City of Portland, Multnomah County, State of Oregon; and at all of the times herein stated it had a large and extensive trade in said business in the State of Oregon, and in other States on the Pacific coast.

VIII.

That each of the respondents above named was at all of the times herein stated, and it is now a common carrier, engaged in interstate commerce, by railroad and in the transportation of passengers and property by railroad for hire over its lines of railways, and between Armory, and other points in the state of Massachusetts, and the City of Portland, in Multnomah County, and other points in the State of Oregon, and other states and territories of the United States, and in the Dominion of Canada; and as such common carrier, each of the said respondents was at all of the times herein stated and it is now, subject to the provisions of the Act of Congress of the United States, entitled An Act to regulate commerce, approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

IX.

That the said petitioner on the several dates hereinafter shown and set forth, caused to be delivered to the said respondent, The New York, New Haven & Hartford Railroad Company, at Armory, Massachusetts, and the said respondent on the said several dates received, the certain carload shipments of motorcycles as hereinafter shown, for transportation and delivery to

the said petitioner at Portland, Oregon; and thereafter the said respondent operating with said other respondents, caused each of the said shipments to be delivered to the said complainant and petitioner at Portland, Oregon, between April 1, 1911, and January 24, 1913.

X.

That at the time of the shipments hereinafter shown and set forth, dated respectively March 25, 1911, and March 9, 1912, Trans-Continental Freight Bureau Westbound Tariff 4-I, I. C. C. 942, issued by R. H. Countiss, was in effect, and carried a first class rate of $3.00 per 100 pounds, and the said first class rate from Armory, Massachusetts, to Portland, Oregon, then established and in force and effect was $3.00 per 100 pounds; and at the time of the shipments hereinafter shown and set forth dated respectively July 3, 1912, August 22, 1912, and January 3, 1913, The Trans-Continental Freight Bureau Westbound Tariff 4-I, I. C. C. 942 issued by R. H. Countiss, was in effect and carried a first class rate of $3.70 per 100 pounds, and the first class rate from Armory, Massachusetts, to Portland, Oregon, then established and in force and effect was $3.70 per 100 pounds.

That at the time of the said shipments the said first class rates as shown by said tariff were and are just and reasonable and should have been applied to motorcycles in carloads.

XI.

That the said respondents charged and collected, and the said petitioner paid to said respondents, under protest, on each of the said shipments hereinafter shown, a

commodity carload rate of four dollars per one hundred pounds, which said charge was and is excessive, unjust and unreasonable, and in violation of said Act to regulate commerce and Acts Amendatory thereof, and supplementary thereto and particularly Section one thereof.

XII.

That the following is a detailed statement, as to each shipment upon which reparation herein is claimed by the said petitioner against said respondents, showing:

1. Point of origin of shipment and date thereof.

2. Waybill number and date thereof.

3. Car number and initial.

4. Carriers interested, and route and point of destination.

5. The weight and commodity rate charged and collected.

6. The weight and first class rate in effect and applicable to motorcycles in carloads, at the time of each of said shipments, and the amount which should have been charged and collected.

7. The amount of reparation due, based upon the first class rate in effect at the time of each shipment.

8. Amount of overcharge.

FROM	WAYBILL	CAR	
Armory, Mass. 8/22/12	Springfield CH-3212-8/23/12	M&O-18688	New York, New Haven & Hartford Railroad Company (Springfield), Boston & Albany Railroad Company (Albany), New York Central & Hudson River Railroad Company (Buffalo), Michigan Central Railroad Company (Chicago), Chicago & North Western Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon - Washington Railroad & Navigation Company (Portland).
Armory, Mass. 7/3/12	Springfield CH-397-7/4/12	LS&MS-59489	"
Armory, Mass. 3/9/12	Springfield CH-675-3/10/12	St. P. 75858	"
Armory, Mass. 1/3/13	Springfield CH-671-1/4/13	C.-62384	"
Armory, Mass. 3/25/11	Springfield CH-5730-3/26/11	MYBH-71635	"

Weight and Commodity Rate Charged and Collected.

WEIGHT	RATE CHARGED	AMOUNT COLLECTED
15,000 lbs.	$4.00 per 100 lbs.	$600.00
15,000 lbs.	4.00 per 100 lbs.	600.00
15,000 lbs.	4.00 per 100 lbs.	600.00
16,700 lbs.	4.00 per 100 lbs.	668.00
17,300 lbs.	4.00 per 100 lbs.	692.00
79,000 lbs.		

Total amount charged and collected.....$3160.00

Weight and First Class Rate in Effect, and Applicable to Motorcycles in Carloads, at the Time of Each of Said Shipments, and the Amount Which Should Have Been Charged and Collected:

WEIGHT	RATE WHICH SHOULD HAVE BEEN CHARGED	AMOUNT WHICH SHOULD HAVE BEEN COLLECTED
15,000 lbs.	$3.70 per 100 lbs.	$555.00
15,000 lbs.	3.70 per 100 lbs.	555.00
15,000 lbs.	3.00 per 100 lbs.	450.00
16,700 lbs.	3.70 per 100 lbs.	617.90
17,300 lbs.	3.00 per 100 lbs.	519.00
79,000 lbs.		

Total amount which should have been charged and collected $2696.90

Total amount of overcharge.....$ 463.10

XIII.

That the foregoing shipments consisted of five carloads of motorcycles which were moved over the lines of

the said respondents as hereinbefore shown and mentioned. That the aggregate weight of the said shipments was 79,000 pounds; and the said respondents charged and collected, and the said petitioner paid, as freight for said service a commodity rate of $4.00 per 100 pounds, or the total sum of $3160.00. That said petitioner paid to said respondents under protest, all of the said excessive, unjust and unreasonable freight charges for said service at the city of Portland, Multnomah county, Oregon, between April 4, 1911, and February 1, 1913. That the aggregate weight of the shipments made on March 25, 1911, and March 9, 1912, respectively, was 32,300 pounds, and when these shipments were made, the first class rate which should have been applied to motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon, was $3.00 per one hundred pounds, which would amount to the total sum of $969.00.

That the aggregate weight of the shipments made July 3, 1912, August 22, 1912, and January 3, 1913, respectively, was 46,700 pounds and when these last named shipments were made the first class rate which should have been applied to motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon, was $3.70 per one hundred pounds, which would amount to the total sum of $1727.90.

That based upon the first class rate which should have been applied to motorcycles in carloads at the time of these several shipments the amount which petitioner should have paid on all of the said shipments was the total sum of $2696.90 and no more.

That the said rate charged and collected by the said respondents from the petitioner was excessive, unjust and unreasonable to the extent that it exceeded the said first class rate which should have been applied to motorcycles in carloads and in effect at the time the said shipments were made. That the difference between the amount so unjustly and unreasonably charged and collected by the said respondents and the amount the said petitioner would have paid at the said first class rate which should have been applied to motorcycles in carloads, and then in effect was, and is the sum of $463.10.

XIV.

That by reason of the said excessive, unjust and unreasonable charges made and collected by said respondents for the said service the said petitioner was been damaged in the sum of $463.10, being the difference between the amount actually charged and collected by the said respondents and paid by the said petitioner, and the reasonable amount which the said petitioner would have paid based upon the said first class rate at the time of said shipments which should have been applied to motorcycles in carloads.

XV.

That on the 10th day of March, 1913, the said petitioner filed its petition with the Interstate Commerce Commission of the United States, against the said respondents and the other respondents mentioned in the title of this cause, which said petition is number 5616 in the files of said Commission, and is in writing in words and figures as follows, to-wit:

Our No. 378.

Before the Interstate Commerce Commission

Ballou & Wright,

vs.

The New York, New Haven & Hartford Railroad Company,

Boston & Albany Railroad Company,

Boston & Maine Railroad,

New York Central & Hudson River Railroad Company,

Michigan Central Railroad Company,

Central New England Railway Company,

Erie Railroad Company,

Chicago & Erie Railroad Company,

Canadian Pacific Railway Company,

Minneapolis, St. Paul & Sault Ste. Marie Railway Company,

Chicago & North Western Railway Company,

The Chicago, Rock Island & Pacific Railway Company,

Union Pacific Railroad Company,

Oregon Short Line Railroad Company,

Spokane International Railway Company,

Oregon-Washington Railroad & Navigation Company.

The petition of the above named complainant respectfully shows:

1. That complainant is a corporation, wholesale dealer in motorcycles, and is located in the city of Portland, State of Oregon.

2. That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between points in the State of Massachusetts and points in the State of Oregon,

and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4th, 1887, and Acts Amendatory thereof and supplementary thereto.

3. That this complainant on the several dates hereinafter shown caused to be delivered to the New York, New Haven & Hartford Railroad Company at Armory, Massachusetts, certain carload shipments of motorcycles as hereinafter shown for transportation to this complainant at Portland, Oregon.

4. That on said shipments said defendants assessed and this complainant paid charges based on rate of $4.00 per One Hundred pounds with a minimum carload weight of 15,000 pounds, this complainant having suffered thereby in the sum of $1732.54 representing the difference between charges assessed and what would have resulted from application of rate of $2.50 per 100 pounds with minimum carload weight of 15,000 pounds contrary to and in violation of said Act.

5. That Trans-Continental Freight Bureau Westbound Tariff 4-I, I. C. C. 942, issued by R. H. Countiss, carries a less carload rate of $4.50 per 100 pounds and a carload rate of $4.00 per 100 pounds with a 15,000 pound carload weight on motorcycles.

6. That said Schedule I. C. C. 942 also carries less carload rate of $4.50 per 100 pounds on bicycles crated and carload rate of $2.50 per 100 pounds with a 10,000 pound carload minimum.

7. That the difference between carload rate of $4.00 and less carload rate of $4.50 on motorcycles results in an unnatural spread and is unduly discriminatory as

between carload and less carload freight, and as such is contrary to and in violation of said Act especially Section 3 thereof.

8. That the rate assessed on the shipments subject of this complaint is in itself and generally in consideration of the services performed and especially with reference to carload rate of $2.50 per 100 pounds on bicycles, unjust and unreasonable and as such contrary to and in violation of said Act, especially Section 1 thereof, and

9. That a just and reasonable rate applicable to said shipments would be not to exceed $2.50 per 100 pounds with a 10,000 carload minimum.

10. That here follows a detailed statement of the shipment subject to this complaint, showing:

1. Point of shipment.
2. Waybill number and date.
3. Car number and initial.
4. Carriers at interest.
5. Weight and charges assessed.
6. Claimed reparation.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 8/22/12	Springfield CH-3212-8/23/12	M&O-18688	New York, New Haven & Hartford Railroad Company (Springfield), Boston & Albany Railroad Company (Albany), New York Central & Hudson River Railroad Company (Buffalo), Michigan Central Railroad Company (Chicago), Chicago & North Western Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon - Washington Railroad & Navigation Company (Portland).
Armory, Mass. 7/3/12	Springfield CH-397-7/4/12	LS&MS-59489	"
Armory, Mass. 3/9/12	Springfield CH-675-3/10/12	St.P.-75858	"
Armory, Mass. 1/3/13	Springfield CH-671-1/4/13	C-62384	"
Armory, Mass. 3/25/11	Springfield CH-5730-3/26/11	NYNH-71635	"

WEIGHT		CHARGES	DATE OF DEL.	OVERCHARGE
15,000 lbs.		600.00		
15,000 lbs.		600.00		
15,000 lbs.		600.00		
16,700 lbs.		668.00		
17,300 lbs.		692.00	4/13/11	
79,000 lbs.		3160.00		
Should be 79,000 lbs.	2.50	1975.00		1185.00

FROM	WAYBILL	CAR	VIA
		Erie-69062	New York, New Haven & Hartford Railroad Company (Hartford), Central New England Railway Company (Maybrook), Erie Railroad Company (Marion), Chicago & Erie Railroad Company (Chicago), Chicago, Rock Island & Pacific Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon-Washington Railroad & Navigation Company (Portland).
Armory, Mass. 5/1/12	Maybrook 570-6/4/12		

WEIGHT		CHARGES	OVERCHARGE
20,615 lbs.		824.60	
Should be 20,615 lbs.	2.50	515.38	309.22

FROM	WAYBILL	CAR	VIA
Armory, Mass. 4/19/12	F-203-4/19/12	NH-85911	New York, New Haven & Hartford Railroad Company (Fitchburg), Boston & Maine Railroad (Newport), Canadian Pacific Railway Company (Sault Ste. Marie), Minneapolis, St. Paul & Sault Ste. Marie Railway Company (Portal), Canadian Pacific Railway Company (Kingsgate), Spokane International Railway Company (Spokane), Oregon-Washington Railroad & Navigation Company (Portland).

WEIGHT		CHARGES	OVERCHARGE
15,888 lbs.		635.52	
Should be 15,888 lbs.	2.50	397.20	
			236.32

Total overcharge $1732.54

11. WHEREFORE, complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violation of said Act to Regulate Commerce, and establish and put in force and apply as maximum in future to the transportation of motorcycles in carloads between Armory, Massachusetts, and Portland, Oregon, in lieu of rate of $4.00 per 100 pounds charges, rate of $2.50 per 100 pounds carload minimum or such other rate as the Commission may deem reasonable and just, and also pay to complainant by way of reparation for the unlawful charges hereinbefore described, the sum of $1732.54 or such other sum as, in view of the evidence to be adduced herein, the Commission may consider the complainant entitled to, and that such other and further order or orders be made, the Commission may consider proper in the premises and complainant's cause may appear to require.

BALLOU & WRIGHT,

By.....

Portland, Oregon.

Dated at San Francisco, February 26, 1913.

J. O. BRACKEN,

Attorney for Complainant,

656 Pacific Building, San Francisco, Cal.

XVa.

That the said cause being at issue upon the said complaint of the said petitioner and the answers of the respondents on file with said Commission, the said cause

coming on regularly for trial on the 6th day of September, 1913, and the said petitioner having produced its evidence in support of its said petition, and the said respondents having offered and submitted evidence against the said petition and in support of their said answers, the said cause was submitted to the said Commission for its decision on October 15, 1913;

That thereafter such proceedings were had and taken by the said Interstate Commerce Commission upon the said petition and answers and upon the evidence adduced thereon, that on the 3d day of February, 1914, the said Interstate Commerce Commission made its report in writing in respect thereto in words and figures as follows- to-wit:

Unreported Opinion No. A-494.

Interstate Commerce Commission

No. 5616

BALLOU & WRIGHT

vs.

New York, New Haven & Hartford Railroad Company, et al.

Submitted October 15, 1913 Decided February 3, 1914.

Rate charged for transportation of motorcycles, in carloads, from Armory, Mass., to Portland, Ore., found to have been unreasonable to the extent that it exceeded the first class rate contemporaneously in effect. Reparation awarded.

J. O. Bracken for complainant.

George D. Squires for Oregon-Washington Railroad & Navigation Company.

REPORT OF THE COMMISSION.

By the Commission:

Complainant is a corporation engaged in the sale of mortorcycles at Portland, Ore. By complaint filed March 10, 1913, it alleges that it was charged an unreasonable rate for the transportation of motorcycles in carloads from Armory, Massachusetts, to Portland, Ore. The establishment of a reasonable rate for the future and reparation are asked.

The shipments described in the petition were made between March 25, 1911 and January 1, 1913, consisted of seven carloads of motorcycles, and moved over the lines of the defendants. The aggregate weight of the shipments was 115,503 pounds, and freight charged were collected in the sum of $4,620.12, based upon a commodity rate of $4.00 per 100 pounds. The commodity rate contemporaneously in effect on bicycles in carloads, boxed or crated, from and to the above points, was $2.50 per 100 pounds. Complainant alleges that the rate charged was unreasonable to the extent that it exceeded $2.50.

At the time of the shipments in question the first class rate from Armory to Portland was $3.00 per 100 pounds. The first class rate in effect at the present time is $3.70, and this rate is applicable to motorcycles in carloads.

In Motorcycle Mfgrs. Asso. v. B. & O. R. R. Co., 26 I. C. C. 127, we said:

In Merchants Traffic Asso. v. A. T. & S. F. Ry. Co., 13 I. C. C. 283, the Commission established a rate of first class on motorcycles in carloads from St. Louis,

Mo., to Denver, Colo. In Rose v. B. & A. R. R. Co., 18 I. C. C. 427, a rate of one-and-one-half times first class l. c. l. on motorcycles from eastern and central freight association points to Pacific Coast destinations was found reasonable. In unreported opinoins Nos. 435 and 436 reparation was awarded upon shipments of motorcycles from Chicago, St. Louis and Milwaukee to Denver, Colorado, upon the basis of one and one-half first class in less than carloads, and first class in carloads.

The opinion of the Commission as gathered from the above decisions has been that motorcycles should be given the first class rate in carloads. We are satisfied upon further consideration of this question, that motorcycles, as now manufactured and offered for shipment, may properly be classified as first class c. l., with a minimum of 12,000 pounds for a standard car, 36 feet in length, and the present official classification will not therefore be disturbed.

In western classification, motorcycles and bicycles are now rated first class in carloads and one and one-half times first class in less than carloads.

Complainant contends that the rate on motorcycles should be no higher than the rate contemporaneously in effect on bicycles. A similar contention was made in Rose v. B. & A. R. R. Co., 18 I. C. C. 427, in which we said.

It is not necessary here to determine that there should be an unvarying relation between the rates on motorcycles and bicycles where they are packed and shipped in the same manner.

We found in that case that one and one-half times the first class rate was reasonable for the transportation of less than carload quantities of motorcycles.

For the reasons given in cases referred to herein, and on this record, we are of opinion and find that the rate charged complainant on the shipments made by it was unreasonable to the extent it exceeded the first class rate in effect at the time the shipments were made. We further find that complainant was damaged in an amount equal to the difference between the amount collected and the amount it would have paid at the first class rate contemporaneously in effect; and that it is, therefore, entitled to an award of reparation. On this record, however, the amount of reparation cannot be determined.

Complainant will be expected to prepare a statement showing, as to each shipment upon which reparation is claimed, the date of movement, point of origin, point of destination, route, weight, car number and initial, rate applied, charges collected, and the amount of reparation due based upon the first class rate contemporaneously in effect. This statement, with the freight bills covering the shipments, should be submitted to the defendants for verification by them. Upon receipt of such statement so prepared by complainant and verified by the defendants, the Commission will take up the matter with a view to the issuance of an order for reparation.

Inasmuch as motorcycles are now rated first class in the western classification, no order for the future is deemed necessary.

By the Commission: GEORGE B. MCGINTY,

(SEAL) Secretary.

XVI.

That thereafter such proceedings were had and taken by the said Interstate Commerce Commission in said cause that on the 14th day of August, 1914, the said Commission made and entered its decision and order of reparation in writing in words and figures as follows, to-wit:

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 14th day of August, A. D. 1914.

James S. Harlan,)
Judson C. Clements,)
Edgar E. Clark,)
Charles C. McChord,) Commissioners.
Balthasar H. Meyer,)
Henry C. Hall,)
Winthrop M. Daniels,)

No. 5616.

Ballou & Wright

vs.

The New York, New Haven & Hartford Railroad Company; Boston & Albany Railroad Company; Boston & Maine Railroad; The New York Central & Hudson River Railroad Company; The Michigan Central Railroad Company; Central New England Railway Company; Erie Railroad Company; Chicago & Erie Railroad Company; The Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Chicago & North Western Railway Company; The Chicago, Rock Island & Pacific Railway Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Spokane International Railway Company; and Oregon-Washington Railroad & Navigation Company.

ORDER AUTHORIZING REPARATION.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on February 3, 1914, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; and this case now coming on to be considered in regard to an application for reparation thereon, and it appearing that the parties have filed an agreed statement respecting the movements of the shipments involved and the amount of reparation due theron, we find on the basis of the Commission's decision, [illegible] of reparation in the sum of $828.13, with interest from January 1, 1913.

It is further ordered, That the New York, New Haven & Hartford Railroad Company; Boston & Albany Railroad Company; The New York Central & Hudson River Railroad Company; The Michigan Central Railroad Company; Chicago & North Western Railway Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Oregon-Washington Railroad & Navigation Company be, and they are hereby authorized and required, on or before October 1, 1914, to pay unto complainant, Ballou & Wright, the sum of $463.10, with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account of an unreasonable rate charged for the transportation of motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon, as more fully and at large appears in and by said report of the Commission and the statement filed of record.

It is further ordered, That the New York, New Haven & Hartford Railroad Company; Central New England Railway Company; Erie Railroad Company; Chicago & Erie Railroad Company; The Chicago, Rock Island & Pacific Railway Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company be and they are hereby authorized and required on or before October 1, 1914, to pay unto complainant, Ballou & Wright, the sum of $206.15 with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account of an unreasonable rate charged for the transportation of motorcycles in carloads, from Armory, Massachusetts to Portland, Oregon, as more fully and at large appears in and by said report of the Commission and the statement filed of record.

It is further ordered, That defendants, New York, New Haven & Hartford Railroad Company; Boston & Maine Railroad; The Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Spokane International Railway Company; and Oregon-Washington Railroad & Navigation Company be and they are hereby authorized and required on or before October 1, 1914, to pay unto complainant, Ballou & Wright, the sum of $158.88 with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account of an unreasonable rate charged for the transportation of motorcycles, in carloads from Armory, Massachusetts, to Portland, Oregon, as more fully and at large appears in and by said report of the Commission and the statement filed of record.

By the Commission:

That no application has ever been made by the said respondents or either thereof to set aside said report, decision, and order, or either thereof, of the said Commission, or for a rehearing of said cause, or of any matter determined therein, nor has the said Commission ever granted a rehearing of said cause, or reversed, changed, or modified the said report, decision, and order, or either thereof, but the same is now in full force and effect.

XVII.

That in and by the terms of the said order of reparation the said respondents mentioned in this cause of action were required to pay unto the said petitioner on or before the 1st day of October, 1914, the sum of $463.10 with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account of the said unreasonable rate charged for the transportation of motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon.

That the said report and order of reparation, were immediately after the dates thereof, served upon the said respondents and an immediate demand was made upon them that they comply with the said order of reparation of the said Interstate Commerce Commission and pay unto the said petitioner the said sum of $463.10 with interest thereon at the rate of 6% per annum from the 1st day of January, 1913, as reparation on account of the said excessive, unjust and unreasonable rate charged and collected by the said respondents as aforesaid, but petitioner alleges: That the said respondents have, and each of them has, failed, neglected and refused, and

each of them still fails, neglects, and refuses to comply with the said order of the said Interstate Commerce Commission, or to obey the provisions thereof, or to pay the said petitioner the said sum of $463.10 with said interest, or any part thereof.

XVIII.

That the sum of Three Hundred Dollars is a reasonable attorneys' fee in this action, to be taxed and collected as a part of the costs thereof.

XIX.

That there is now due and owing the said petitioner from the said respondents the said sum of $463.10, together with interest thereon at the rate of 6% per annum from January 1, 1913, and the further sum of Three Hundred Dollars, a reasonable attorneys' fee herein.

The said petitioner, Ballou & Wright, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the city of Portland, Multnomah County, in the State of Oregon, and a citizen of and domiciled in the said State of Oregon, for its cause of action against the said respondents, The New York, New Haven & Hartford Railroad Company, a corporation; Central New England Railway Company, a corporation; Erie Railroad Company, a corporation; Chicago & Erie Railroad Company, a corporation; The Chicago, Rock Island & Pacific Railway Company, a corporation; Union Pacific Railroad Company, a corporation; Oregon Short Line Railroad Company, a corporation; Oregon-Washington Railroad & Navigation Company, a corporation, alleges:

I.

That said petitioner as a part of this cause of action re-alleges all of the allegations, matters, and things, contained in paragraphs I, II, III, IV, V, VI, VII and VIII of the preceding cause of action herein, and hereby refers to and adopts each of the said paragraphs as a part of this cause of action as fully and to the same extent as if each of the said foregoing paragraphs and matters therein alleged were particularly and fully set forth in this cause of action.

II.

That the said petitioner, on the dates hereinafter shown and set forth, caused to be delivered to the said respondent, The New York, New Haven & Hartford Railroad Company, at Armory, Massachusetts, and the said respondent on the said date received the certain carload shipment of motorcycles as hereinafter shown, for transportation and delivery to the said petitioner at Portland, Oregon; and thereafter the said respondent operating with said other respondents caused the said shipment to be delivered to the said petitioner at Portland, Oregon, about the 20th day of May, 1912.

III.

That at the time of the said shipment hereinafter shown and set forth dated May 1, 1912, The Trans-Continental Freight Bureau Westbound Tariff 4-I, I. C. C. 942, issued by R. H. Countiss, was in effect and carried a first class rate of $3.00 per 100 pounds and the said first class rate from Armory, Massachusetts, to Portland, Oregon, then established and in force and effect was $3.00 per 100 pounds. That at the time of

said shipment the said first class rate as shown by said tariff was just and reasonable and the same should have been applied to motorcycles in carloads.

IV.

That the said respondents charged and collected, and the said petitioner paid to the said respondents, under protest, on said shipment hereinafter shown a commodity carload rate of $4.00 per 100 pounds, which said charge was and is excessive, unjust and unreasonable, and in violation of said Act to Regulate Commerce and acts amendatory thereof, and supplementary thereto, and particularly Section one thereof.

V.

That the following is a detailed statement as to the said shipment upon which reparation herein is claimed by the said petitioner against the said respondents, showing:

1. Point of origin of shipment and date thereof.
2. Waybill number and date thereof.
3. Car number and initial.
4. Carriers interested, and route and point of destination.
5. The weight and commodity rate charged and collected.
6. The weight and first class rate in effect and applicable to motorcycles in carloads, at the time of said shipment, and the amount which should have been collected and charged.
7. The amount of reparation due, based upon the first class rate in effect at the time of said shipment.
8. Amount of overcharge.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 5/1/12	Maybrook 570-5/4/12	Erie-69062	New York, New Haven & Hartford Railroad Company (Hartford), Central New England Railway Company (Maybrook), Erie Railroad Company (Marion), Chicago & Erie Railroad Company (Chicago), Chicago, Rock Island & Pacific Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon-Washington Railroad & Navigation Company (Portland).

Weight and Commodity Rate Charged and Collected

WEIGHT	RATE CHARGED	AMOUNT COLLECTED
20615 lbs.	$4.00 per 100 lbs.	$824.60

Weight and First Class Rate in Effect, and Applicable to Motorcycles in Carloads, at the Time of Said Shipment and the Amount Which Should Have Been Charged and Collected.

WEIGHT	RATE WHICH SHOULD HAVE BEEN CHARGED	AMOUNT WHICH SHOULD HAVE BEEN COLLECTED
20615 lbs.	$3.00 per 100 lbs.	$618.45

$618.45

Total amount of overcharge.....$206.15

VI.

That the foregoing shipment consisted of one carload of motorcycles which was moved over the lines of the said respondents as hereinbefore shown and mentioned; that the aggregate weight of the said shipments was Twenty Thousand Six Hundred and Fifteen pounds; and the said respondents charged and collected and the said petitioner paid, as freight for said service a commodity rate of $4.00 per 100 pounds, or the total sum of Eight Hundred Twenty-four and 60/100 Dollars. That said petitioner paid to said respondent, under protest, the said excessive, unjust and unreasonable freight charges for said service at the City of Portland, Multnomah County, Oregon, between the 20th day of May, 1912, and the 1st day of June, 1912.

That based upon the first class rate which should have been applied to motorcycles in carloads at the time of the said shipment the amount which petitioner should have paid on said shipment was the sum of Six Hundred Eighteen and 45/100 Dollars, and no more. That the said rate charged and collected by the said respondents from the said petitioner was excessive, unjust, and unreasonable to the extent that it exceeded the said first class rate which should have been applied to motorcycles in carloads, and in effect at the time the said shipment was made.

That the difference between the amount so unjustly and unreasonably charged and collected by the said respondents and the amount the said petitioner would have paid at the said first class rate which should have been applied to motorcycles in carloads and which was then

in effect was, and is the sum of Two Hundred Six and 15/100 Dollars.

VII.

That by reason of the said excessive, unjust and unreasonable charge made and collected by said respondents for the said service the said petitioner has been damaged in the said sum of Two Hundred Six and 15/100 Dollars, being the difference between the amount actually charged and collected by the said respondents and paid by the said petitioner, and the reasonable amount which the said petitioner would have paid based upon the said first class rate at the time of said shipment which should have been applied to motorcycles in carloads.

VIII.

The said petitioner as a part of this cause of action re-alleges all of the allegations, matters, and things contained in paragraphs XV, XVa and XVI, of the preceding cause of action herein, and hereby refers to, and adopts each of the said paragraphs as a part of this cause of action as fully and to the same extent as if each of the said foregoing paragraphs, and matters therein alleged were particularly and fully set forth in this cause of action.

IX.

That in and by the terms of the said order of reparation the said respondents mentioned in this cause of action were required to pay unto the said petitioner on or before the 1st day of October, 1914, the sum of $206.15 with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account

of the said unreasonable rate charged for the transportation of motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon.

That the said report and order of reparation, were immediately after the dates thereof, served upon the said respondents and an immediate demand was made upon them that they comply with the said order of reparation of the said Interstate Commerce Commission and pay unto the said petitioner the said sum of $206.15, with interest thereon at the rate of 6% per annum from the 1st day of January, 1913, as reparation on account of the said excessive, unjust and unreasonable rate charged and collected by the said respondents as aforesaid, but petitioner alleges: That the said respondents have, and each of them has, failed, neglected, and refused, and each of them still fails, neglects, and refuses to comply with the said order of the said Interstate Commerce Commission, or to obey the provisions thereof, or to pay the said petitioner the said sum of $206.15 with said interest, or any part thereof.

X.

That the sum of One Hundred Dollars is a reasonable attorneys' fee in this action, to be taxed and collected as a part of the costs thereof.

XI.

That there is now due and owing the said petitioner from the said respondents the said sum of $206.15, together with interest thereon at the rate of 6% per annum from January 1, 1913, and the further sum of One Hundred Dollars, a reasonable attorneys' fee herein.

The said petitioner, Ballou & Wright, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with its principal office and place of business in the City of Portland, Multnomah County, in the State of Oregon, and a citizen of, and domiciled in the said State of Oregon, for its cause of action against the said respondents, The New York, New Haven & Hartford Railroad Company, a corporation; Boston & Maine Railroad, a corporation; The Canadian Pacific Railway Company, a corporation; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a corporation; Spokane International Railway Company, a corporation; Oregon-Washington Railroad & Navigation Company, a corporation, alleges:

I.

That the said Ballou & Wright, is now, and was at all of the time herein mentioned, a corporation duly organized and existing under and by virtue of the laws of the State of Oregon with its principal office and place of business at the City of Portland, in Multnomah County, State of Oregon, and as such corporation, is now, and was at all of the times herein mentioned, a citizen of, and domiciled in the said State of Oregon.

II.

That the said respondent, Oregon-Washington Railroad & Navigation Company, is now, and was at all of the times herein mentioned, a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon with its principal office, and place of business and with its principal operating office at Port-

land, Multnomah County, State of Oregon, and as such corporation, is now, and was at all of the times herein mentioned, a citizen of, and domiciled in, the said State of Oregon. That the said resepondent, Oregon-Washington Railroad & Navigation Company, was at all of the times herein stated, the terminal company which in conjunction with the said other respondents, moved the shipments hereinafter mentioned.

III.

That the said respondent, Canadian Pacific Railway Company, is now, and was at all of the times herein mentioned, a corporation duly organized and existing under and by virtue of the laws of the Dominion of Canada, with its principal office and place of business at Montreal in the Dominion of Canada, and as such corporation, it is now, and it was at all of the times herein mentioned, a citizen of, and domiciled in, the said Dominion of Canada.

IV.

The said petitioner as a part of this cause of action re-alleges all of the allegations, matters, and things contained in paragraphs VI, VII and VIII of the first cause of action herein and hereby refers to and adopts each of the said paragraphs as a part of this cause of action as fully and as to the same extent, as if each of the said foregoing paragraphs and matters therein alleged were particularly and fully set forth in this cause of action.

V.

That the said petitioner on the several dates hereinafter shown and set forth, caused to be delivered to the said

respondent, The New York, New Haven & Hartford Railroad Company, at Armory, Massachusetts, and the said respondent on the said several dates received, the certain carload shipments of motorcycles as hereinafter shown, for transportation and delivery to the said petitioner at Portland, Oregon; and thereafter the said respondent operating with said other respondents, caused the said shipment to be delivered to the said complainant and petitioner, at Portland, Oregon, about May 20th, 1912.

VI.

That at the time of the said shipment hereinafter shown and set forth, dated April 19, 1912, The Trans-Continental Freight Bureau Westbound Tariff 4-I, I. C. C. 942, issued by R. H. Countiss, was in effect and carried a first class rate of $3.00 per 100 pounds, and the said first class rate from Armory, Massachusetts, to Portland, Oregon, then established and in force and effect was $3.00 per 100 pounds.

That at the time of said shipment the said first class rate as shown by said tariff was just and reasonable and the same should have been applied to motorcycles in carloads.

VII.

That the said respondents charged and collected, and the said petitioner paid to the said respondents, under protest, on said shipment hereinafter shown a commodity carload rate of $4.00 per 100 pounds, which said charge was and is excessive, unjust and unreasonable, and in violation of said Act to Regulate Commerce and acts

amendatory thereof, and supplementary thereto, and particularly Section one thereof.

VIII.

That the following is a detailed statement as to the said shipment upon which reparation herein is claimed by the said petitioner against the said respondents, showing:

1. Point of origin of shipment and date thereof.
2. Waybill number and date thereof.
3. Car number and initial.
4. Carriers interested, and route and point of destination.
5. The weight and commodity rate charged and collected.
6. The weight and first class rate in effect and applicable to motorcycles in carloads at the time of said shipment, and the amount which should have been collected and charged.
7. The amount of reparation due, based upon the first class rate in effect at the time of said shipment.
8. Amount of overcharge.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 4/19/12	F-203-4/19/12	NH-85911	The New York, New Haven & Hartford Railroad Company (Fitchburg), Boston & Maine Railroad (Newport), Canadian Pacific Railway (Sault Ste. Marie), Minneapolis, St. Paul & Sault Ste. Marie Railway Company (Portal), Canadian Pacific Railway (Kingsgate), Spokane International Railway Company (Spokane), Oregon-Washington Railroad & Navigation Company (Portland).

Weight and Commodity Rate Charged and Collected.

WEIGHT	RATE CHARGED.	AMOUNT COLLECTED	
15888 lbs.	$4.00 per 100 lbs.	$635.52	$635.52

Weight and First Class Rate in Effect and Applicable to Motorcycles in Carloads, at the Time of Said Shipments, and the Amount Which Should Have Been Charged and Collected.

WEIGHT	RATE WHICH SHOULD HAVE BEEN CHARGED	AMOUNT WHICH SHOULD HAVE BEEN COLLECTED	
15888 lbs.	$3.00 per 100 lbs.	$476.64	$476.64

Total overcharge.....158.88

IX.

That the foregoing shipment consisted of one carload of motorcycles which was moved over the lines of the said respondents as hereinbefore shown and mentioned. That the aggregate weight of the said shipment was 15,888 pounds, and the said respondents charged and collected and the said petitioner paid as freight for said service a commodity rate of $4.00 per 100 pounds, or the total sum of Six Hundred Thirty-five and 52/100 Dollars.

That the said petitioner, paid the said respondents, under protest, the said excessive, unjust and unreasonable freight charges for said services at the City of Portland, Multnomah County, Oregon, between the 20th day of May, 1912, and the 1st day of June, 1912.

That based upon the first class rate which should have been applied to motorcycles in carloads at the time of said shipment, the sum which petitioner should have paid on said shipment was the sum of Four Hundred and Seventy-six and 64/100 Dollars, and no more. That the said rate charged and collected by the said respondents from the said petitioner was excessive, unjust, and unreasonable to the extent that it exceeded the first class rate which should have been applied to motorcycles in carloads and in effect at the time of the said shipment was made.

That the difference between the amount so unjustly and unreasonably charged and collected by the said respondents and the amount the said petitioner would have paid at the said first class rate which should have been applied to motorcycles in carloads and which was then

in effect was, and is, the sum of One Hundred Fifty-eight and 88/100 Dollars.

X.

That by reason of the said excessive, unjust and unreasonable charge made and collected by said respondents for the said service the said petitioner has been damaged in the said sum of One Hundred Fifty-eight and 88/100 Dollars, being the difference between the amount actually charged and collected by the said respondents and paid by the said petitioner, and the reasonable amount which the said petitioner would have paid based upon the said first class rate at the time of said shipment which should have been applied to motorcycles in carloads.

XI.

The said petitioner as a part of this cause of action re-alleges all of the allegations, matters, and things, contained in paragraphs XV, XVa and XVI of the first cause of action herein and hereby referred to, and adopts each of the said paragraphs as a part of this cause of action as fully and to the same extent as if each of the said foregoing paragraphs, and matters therein alleged were particularly and fully set forth in this cause of action.

XII.

That in and by the terms of the said order of reparation the said respondents mentioned in this cause of action were required to pay unto the said petitioner on or before the 1st day of October, 1914, the sum of $158.88, with interest thereon at the rate of 6% per annum from January 1, 1913, as reparation on account

of the said unreasonable rate charged for the transportation of motorcycles in carloads from Armory, Massachusetts, to Portland, Oregon.

That the said report and order of reparation, were immediately after the dates thereof, served upon the said respondents and an immediate demand was made upon them that they comply with the said order of reparation of the said Interstate Commerce Commission and pay unto the said petitioner the said sum of $158.88 with interest thereon at the rate of 6% per annum from the 1st day of January, 1913, as reparation on account of the said excessive, unjust and unreasonable rate charged and collected by the said respondents as aforesaid, but petitioner alleges: That the said respondents have, and each of them has, failed, neglected, and refused, and they and each of them still fails, neglects, and refuses to comply with the said order of the said Interstate Commerce Commission or to obey the provisions thereof, or to pay the said petitioner the said sum of $158.88 with interest, or any part thereof.

XIII.

That the sum of One Hundred Dollars is a reasonable attorneys' fee in this action, to be taxed and collected as a part of the costs thereof.

XIV.

That there is now due and owing the said petitioner from the said respondents and the said sum of $206.15, together with interest thereon at the rate of 6% per annum from January 1, 1913, and the further sum of One Hundred Dollars, a reasonable attorneys' fee herein.

WHEREFORE, petitioner demands judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & North Western Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, for the said sum of $463.10 with interest thereon at the rate of 6% per annum from the 1st day of January, 1913, and the further sum of $300.00 as attorneys' fee herein and for its costs and disbursements in this action.

And petitioner demands judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, The Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, for the said sum of $206.15 with interest thereon at the rate of 6% per annum from the 1st day of January, 1913, and the further sum of $100.00 as attorneys' fees herein, and for its costs and disbursements in this action.

And the said petitioner demands judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, The Canadian Pacific Railway Company, The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company, and Oregon-

Washington Railroad & Navigation Company, for the said sum of $158.88, together with interest thereon at the rate of 6% per annum from the 1st of January, 1913, and for a further sum of $100.00 as attorneys' fees herein and for its costs and disbursements in this action.

WILLIAM H. BARD and
JAMES E. FENTON,
Attorneys for Petitioner.

United States of America,
District of Oregon,
County of Multnomah—ss.

I, C. F. Wright, being duly sworn depose and say that I am the Vice-President of the said petitioner, and make this verification for and on its behalf. That I have read the foregoing petition, know the contents thereof, and the same is, and the allegations therein are true, as I verily believe.

C. F. WRIGHT.

Subscribed and sworn to before me this 3d day of June, 1915.

(Seal) W. H. BARD,
Notary Public for the State of Oregon.
Residence at Portland, Oregon.

Filed June 3, 1915.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 20th day of December, 1915, there was duly filed in said Court, and cause, the Answer of Boston & Maine Railroad Company et al, and Amended Answer of Oregon-Washington Railroad & Navigation Company et al, in words and figures as follows, to-wit:

ANSWER OF BOSTON & MAINE RAILROAD COMPANY, ET AL. AND AMENDED ANSWER OF OREGON-WASHINGTON RAILROAD AND NAVIGATION COMPANY, ET AL.

Boston & Maine Railroad, The Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company and Spokane International Railway Company, for answer to petitioner's third cause of action; Oregon Short Line Railroad Company and Union Pacific Railroad Company, for amended answer to petitioner's first and second causes of action; and Oregon-Washington Railroad & Navigation Company, for amended answer to petitioner's first, second and third causes of action, admit, deny and allege, as follows: (The following paragraphs from number I to number XVIII inclusive pertain to first cause of action.)

I.

Admit the allegations contained in paragraph I of the petition.

II.

Admit the allegations of paragraphs II and III of the petition.

III.

Admit the allegations of paragraphs IV and V of the petition.

IV.

Answering paragraph VI of the petition these respondents allege that they have no knowledge or information sufficient to form á belief as to whether either or any of the allegations contained in paragraph VI of the petition are true, and, therefore, deny the same and the whole thereof.

V.

Answering paragraph VII of the petition, these respondents admit the allegations therein contained, except that it is alleged that they have no knowledge or information sufficient to form a belief as to whether petitioner had or has a large and extensive trade or any trade in said business in the State of Oregon, and in other States on the Pacific Coast, and, therefore, deny the same.

VI.

Admit the allegations of paragraph VIII of the petition, except that it is denied that these respondents are common carriers between Armory and other points in the State of Massachusetts, and the City of Portland, in Multnomah County, or other points in the State of Oregon.

VII.

Deny each and every allegation contained in paragraph IX of the petition.

VIII.

Answering paragraph X of the petition these respondents admit the allegations therein contained, except that it is denied that at the time of said shipments the first class rates as shown by said tariff were or are just or reasonable when applied to the transportation of motorcycles in carload lots between Armory, Mass., and Portland, Oregon, and denies that said first class rates should have been applied to the shipments of motorcycles made by the petitioner between the dates mentioned in this complaint.

IX.

Deny each and every allegation contained in paragraph XI of the petition, except that it is admitted that the respondents charged and collected on said shipments of motorcycles, made by the petitioner, a commodity carload rate of $4.00 per cwt. which rate was the only lawful rate applicable to said shipments.

X.

Deny each and every allegation contained in paragraph XII of the petition.

XI.

Deny each and every allegation contained in paragraph XIII of the petition.

XII.

Deny each and every allegation contained in paragraph XIV of the petition.

XIII.

Answering paragraph XV of the petition, these respondents admit that the petitioner heretofore and on or

about the 10th day of March, 1913, filed with the Interstate Commerce Commission a petition alleging the unreasonableness of the rates charged for the transportation of motorcycles in carload lots between Armory, Mass., and Portland, Oregon, which petition is substantially as set forth in said paragraph XV.

XIV.

Answering paragraph XV (a) of the petition, these respondents admit that upon said petition and answers of the respondents named in petition before the Interstate Commerce Commission and the issues thereby enjoined, the Interstate Commerce Commission did render its opinion dated February 3, 1914, which opinion is substantially as set forth in said paragraph XV (a), but this defendant alleges that said Commission in the rendition of its decision erred in finding that the commodity rate of $4.00 charged for the transportation of motorcycles in carload lots was unreasonable, that the complainant therein was damaged in an amount equal to the difference between the amount collected and the amount it would have paid at the first class rate contemporaneously in effect and that the petitioner was therefore entitled to an award of reparation; and alleges that said decision of the Interstate Commerce Commission insofar as it purports to find that the petitioner herein was damaged by the assessment and collection of the charges on carload shipments of motorcycles between Armory, Mass., and Portland, Oregon, as assessed and collected by the respondent railroad companies was not founded upon fact but was contrary to the evidence submitted before said Commission, and the conclusions to

be rightfully deduced therefrom; these respondents deny that petitioner suffered any damage by reason of the payment of charges based on said commodity rate of $4.00 and allege that petitioner suffered no damage by reason thereof.

XV.

Answering paragraph XVI of the petition these respondents admit that subsequent to the rendering of its opinion, as set forth in paragraph XV (a) of the petition, and on or about the 14th day of August, 1914, the said Interstate Commerce Commission made and entered its decision and order of reparation which decision and order is substantially as set forth in said paragraph XVI of the petition, but these respondents allege that said decision and order insofar as same purport to find that the petitioner herein was damaged by reason of the exaction and collection of the commodity rate of $4.00 per cwt. on carload shipments of motorcycles between Armory, Mass., and Portland, Oregon, was not founded upon fact and was not the correct conclusion to be arrived at from the evidence submitted before the Commission, and that the said Interstate Commerce Commission erred in finding that said petitioner had been damaged as stated in their decision and order for reparation or in any other sum or sums whatsoever, and these respondents allege that petitioner suffered no damage whatsoever by reason of the payment of charges as assessed and collected on said shipments.

XVI.

Admits the allegations contained in paragraph XVII of the petition, except that it is denied that the

charges assessed and collected by these respondents for the transportation of motorcycles were excessive, unjust or unreasonable.

XVII.

Deny each and every allegation contained in paragraph XVIII of the petition.

XVIII.

Deny each and every allegation contained in paragraph XIX of the petition.

Answering petitioner's second cause of action, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington & Navigation Company admit, deny and allege:

I.

Answering paragraph I of the petitioner's second cause of action, these respondents incorporate herein as their answer to said paragraph the answers made to paragraphs I, II, III, IV, V, VI, VII and VIII of petitioner's preceding and first cause of action, and refer to said answers and each of them and adopt each of said answers as the answer to this paragraph as fully and to the same intent as if each of the answers to said paragraphs herein specified were set out at length.

II.

Answering paragraph II of the second cause of action, these respondents admit that the petitioner heretofore caused to be delivered to the New York, New Haven & Hartford Railroad Company at Armory, Mass., certain carload shipments of motorcycles, said

shipments being consigned to the petitioner at Portland, Oregon, which shipments were received by the New York, New Haven & Hartford Railroad Company and by it and its connecting lines of railroad thereafter transported and were delivered to the petitioner at Portland, Oregon; but as to the correctness the statement of shipments shown in said second cause of action, these respondents have no knowledge or information sufficient to form a belief and therefore deny the same.

III.

These respondents admit the allegations of paragraph III of the second cause of action except that it is denied that the first class rate of $3.00 per cwt. applicable between Armory, Mass., and Portland, Oregon, as shown by the tariffs mentioned in said paragraph should have been applied to carload shipments of motorcycles between said points and between said dates.

IV.

Answering paragraph IV of petitioner's second cause of action, these respondents deny each and every allegation therein contained, except that it is admitted that the respondents charged and collected and the petitioner paid to the respondents for the transportation of carload shipments of motorcycles between the points hereinbefore referred to, the commodity rate of $4.00 per cwt.

V.

Answering paragraph V of the petitioner's second cause of action these respondents admit that certain shipments of motorcycles were made between said points and on or about the date shown in said paragraph, but as to

the correctness of said statement these respondents have no knowledge or information sufficient to form a belief and therefore deny the same.

VI.

Answering paragraph VI of the petitioner's second cause of action these respondents deny each and every allegation therein contained, except that it is admitted for the service of transportation of motorcycles in carload lots between Armory, Mass., and Portland, Oregon, the respondents assessed and collected charges at the rate of $4.00 per cwt.

VII.

Answering paragraph VII of the second cause of action, these respondents deny each and every allegation therein contained.

VIII.

Answering paragraph VIII of petitioner's second cause of action these respondents make as their answer to said paragraph the answers made to paragraphs XV, XV (a) and XVI of petitioner's preceding and first cause of action, and refer to said answers and each of them and adopt said answers and each of them as their answer to this paragraph as fully and to the same intent as if each of said answers to said paragraphs here specified were here set out at length.

IX.

Admit the allegations contained in paragraph IX of the second cause of action, except that it is denied that the rates assessed and collected by these respondents for the transportation of motorcycles were excessive, unjust or unreasonable.

X.

Deny the allegations contained in pargarph X of the second cause of action.

XI.

Deny the allegations contained in paragraph XI of the second cause of action.

Answering petitioner's third cause of action, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, admit, deny and allege:

I.

Admit the allegations contained in paragraphs I, II and III of said third cause of action.

II.

Answering paragraph IV of petitioner's third cause of action, these respondents hereby incorporate and make as their answer to said paragraph IV the answers and each of them heretofore made to paragraphs VI, VII and VIII of petitioner's first cause of action, and hereby refer to and adopt each and every of said answers fully and to the same intent as if each of the answers to paragraphs VI, VII and VIII of petitioner's first cause of action were here set out at length.

III.

Answering paragraph V of the petitioner's third cause of action, these respondents admit that heretofore the petitioner caused to be delivered to the New York, New Haven & Hartford Railroad Company, at

Armory, Mass., certain carload shipments of motorcycles to be transported over the line of said railroad company and its connecting carriers and delivered to the petitioner at Portland, Oregon, which said shipments were so transported and delivered, but as to the correctness of the statement of shipments shown in said third cause of action, these respondents have no information or knowledge or information sufficient to form a belief and therefore deny the same.

IV.

Answering paragraph VI, of the third cause of action, these respondents admit the allegations therein contained, except that it is denied that the first class rate as shown by said tariffs should have been applied to the movement of carload shipments of motorcycles between Armory, Mass., and Portland, Oregon.

V.

Deny each and every allegation contained in paragraph VII of petitioner's third cause of action.

VI

Answering paragraph VIII of petitioner's third cause of action these respondents allege that as to the correctness of the statement therein set out they have no knowledge or information sufficient to form a belief and therefore deny the same.

VII.

Answering paragraph IX of the petitioner's third cause of action, these respondents deny each and every allegation therein contained, except that it is admitted that the respondents charged and collected and the peti-

tioner paid for the transportation of motorcycles between Armory, Mass., and Portland, Ore., the commodity rate of $4.00 per cwt.

VIII.

Deny each and every allegation contained in paragraph X of petitioner's third cause of action.

IX.

Answering paragraph XI of petitioner's third cause of action, these respondents make as their answer to said paragraph the answers made to paragraphs XV, XV (a) and XVI of petitioner's first cause of action, and refer to said answers and each of them and adopt said answers and each of them as their answers to this paragraph as fully and to all intents as if each of said answers to said paragraphs here specified were here set out at length.

X.

Admit the allegation of paragraph XII of petitioner's third cause of action, except that it is denied that the charges assessed and collected by these respondents for the transportation of mortorcycles were excessive, unjust or unreasonable.

XI.

Deny each and every allegation contained in paragraph XIII of petitioner's third cause of action.

XII.

Deny each and every allegation contained in paragraph XIV of petitioner's third cause of action.

Respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for a further and separate answer and defense to petitioner's first cause of action allege:

I.

That heretofore and between March 25, 1911, and January 1, 1913, there were transported over through routes from Armory, Mass., to Portland, Oregon, of which through routes the lines of railroad of the respondents Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company constituted a part, various carload shipments of motorcycles, consigned to the petitioner at Portland; that on every of said shipments of motorcycles there were assessed and collected, and the petitioner paid charges bases on a rate of $4.00 per hundred pounds, which rate was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Mass., to Portland, Oregon.

II.

That by the payment of charges as alleged in the preceding paragraph, petitioner has in no wise been damaged, nor has petitioner been injured thereby to any extent whatsoever.

Respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington & Navigation Company for a second, further and separate answer and defense to petitioner's first cause of action, allege:

I.

That theretofore and between March 25, 1911, and January 1, 1913, there were transported over through routes from Armory, Mass., to Portland, Ore., of which through routes the lines of railroad of the respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company constituted a part, various carload shipments of motorcycles, consigned to the petitioner at Portland; that on every of said shipments of motorcycles there were assessed and collected, and the petitioner paid charges based on a rate of $4.00 per hundred pounds, which rate was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Mass., to Portland, Oregon.

II.

That the said rate of $4.00 per hundred pounds so charged and paid for the transportation of motorcycles in carload lots from Armory, Mass., to Portland was a just and reasonable rate therefor.

Respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for a further and separate answer and defense to petitioner's second cause of action allege:

I.

That heretofore and between March 25, 1911, and January 1, 1913, there were transported over through routes from Armory, Mass., to Portland, Oregon, of

which through routes the lines of railroad of the respondents, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company constituted a part, various carload shipments of motorcycles, consigned to the petitioner at Portland; that on every of said shipments of motorcycles there were assessed and collected, and the petitioner paid charges based on a rate of $4.00 per hundred pounds, which rate was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Mass., to Portland, Oregon.

II.

That by the payment of charges as alleged in the preceding paragraph, petitioner has in no wise been damaged, nor has petitioner been injured thereby to any extent whatsoever.

Respondents, Boston & Maine Railroad, The Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company for a further and separate answer and defense to petitioner's third cause of action allege:

I.

That heretofore and between March 25, 1911, and January 1, 1913, there were transported over through routes from Armory, Mass., to Portland, Oregon, of which through routes the lines of railroad of the respondents, Boston & Maine Railroad, The Canadian

Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company constituted a part, various carload shipments of motorcycles, consigned to the petitioner at Portland; that on every of said shipments of motorcycles there were assessed and collected, and the petitioner paid charges based on a rate of $4.00 per hundred pounds, which rate was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Mass., to Portland, Oregon.

II.

That by the payment of charges as alleged in the preceding paragraph, petitioner has in no wise been damaged, nor has petitioner been injured thereby to any extent whatsoever.

Respondents, Boston & Maine Railroad, The Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane Interational Railway Company and Oregon-Washington Railroad & Navigation Company for a second further and separate answer and defense to petitioner's third cause of action allege:

I.

That heretofore and between March 25, 1911, and January 1, 1913, there were transported over through routes from Armory, Mass., to Portland, Oregon, of which through routes the lines of railroad of the respondents, Boston & Maine Railroad, The Canadian Pacific

Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company constituted a part, various carload shipments of motorcycles, consigned to the petitioner at Portland; that on every of said shipments of motorcycles there were assessed and collected, and the petitioner paid charges based on a rate of $4.00 per hundred pounds, which rate was the lawful rate applicable to the transportation of mortorcycles in carload lots from Armory, Mass., to Portland, Oregon.

II.

That the said rate of $4.00 per hundred pounds so charged and paid for the transportation of motorcycles in carload lots from Armory, Mass., to Portland, was a just and reasonable rate therefor.

WHEREFORE, having fully answered petitioner's petition herein, these respondents pray that the same be dismissed.

A. C. SPENCER,
C. E. COCHRAN,
A. W. HAWKINS,

Attorneys for Boston & Maine Railroad, The Canadian Pacific Railway Company, Minneapolis, St. P. & S. S. M. Ry. Co., Spokane International Railway Company, Union Pacific Ry Co., Oregon Short Line Ry. Co., and Oregon-Washington Railroad & Navigation Company.

State of Oregon,

County of Multnomah—ss.

A. C. SPENCER, being first duly sworn, on oath deposes and says: that he is Assistant Secretary and General Attorney for Oregon-Washington Railroad & Navigation Company, one of the respondents above named; that he has read the foregoing answer and amended answer, knows the contents thereof, and the same is true as he verily believes.

A. C. SPENCER,

Subscribed and sworn to before me this 20th day of December, 1915.

A. W. HAWKINS,
Notary Public for Oregon.

My Commission Expires March 12, 1916.

(Seal)

Service by copy admitted at Portland, Ore., December 20, 1915.

WILL H. BARD,
Solicitor for Plaintiff.

Filed December 20, 1915.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 11th day of February, 1916, there was duly filed in said Court and cause, an Appearance and Answer of New York, New Haven and Hartford Railroad Company et al, in words and figures as follows, to-wit:

APPEARANCE AND ANSWER OF NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, ET AL.

The New York, New Haven & Hartford Railroad Company, New York Central Railroad Company, Michigan Central Railroad Company, Erie Railroad Company, Chicago and Erie Railroad Company, Central of New England Railway Company, Chicago & Northwestern Railroad Company, Chicago, Rock Island & Pacific Railroad Company and J. M. Dickinson, Receiver thereof, and Boston and Albany Railroad Company, respondents in the above entitled action, by their attorney, waiving service of summons herein, hereby enter and make their appearance, and the appearance of each of them; and said respondents and each of them hereby adopt and make as their own the amended answer heretofore filed in this proceeding by and on behalf of the Boston and Maine Railroad Company, the Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, the same and of the same affect as if the respondents

first above named had joined in said answer, as the same may be applicable to each.

A. W. HAWKINS,
Of Attorneys for—

The New York, New Haven & Hartford Railroad Co., New York Central R. R. Co., Michigan Central R. R. Co., Erie R. R. Co., Chicago & Erie R. R. Co., Central of New England Railway Co., Chicago & Northwestern R. R. Co., Chicago, Rock Island & Pacific R. R. Co., and J. M. Dickinson, Receiver thereof, and Boston and Albany R. R. Co.

Filed February 11, 1916. G. H. MARSH, Clerk.

And afterwards, to-wit, on the 11th day of February, 1916, there was duly filed in said Court and cause, a Stipulation to try the cause without the intervention of a jury, in words and figures as follows, to-wit:

STIPULATION WAIVING JURY.

It is stipulated and agreed by and between the attorneys for the above named Petitioner and the attorneys for the above named respondents, that the issues of fact in the above entitled cause may be tried and determined by the above entitled Court without the intervention of a jury, and a trial and determination thereof by a jury is hereby expressly waived.

WILL H. BARD,
JAMES E. FENTON,
Attorneys for Petitioner.
A. C. SPENCER and A. W. HAWKINS,
Attorneys for Respondents.

Filed February 11, 1916. G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the 14th day of February, 1916, the same being the 91st judicial day of the regular November term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER TO AMEND PETITION.

Now, at this time, February 14th, 1916, upon motion of James E. Fenton, of counsel for petitioner, and no objection being made thereto,

IT IS ORDERED that the title to the above entitled cause be and the same is hereby amended by adding thereto, under the name of the defendant Chicago, Rock Island & Pacific Railway Company, a corporation, the following: "and J. M. Dickinson, Receiver thereof."

And afterwards, to-wit, on Wednesday, the 16th day of February, 1916, the same being the 93rd judicial day of the regular November term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER TO AMEND PETITION BY INTERLINEATION.

ORDER TO FILE AMENDMENT TO AMENDED ANSWER.

Now, at this day, comes the plaintiff by Mr. James E. Fenton, and Mr. W. H. Bard, of counsel and the defendant by Mr. Charles E. Cochran and Mr. A. W. Hawkins, of counsel, whereupon on motion of said plaintiff it is ordered that it be, and it is hereby allowed to amend by interlineation its complaint herein by inserting in Paragraph six on page four the following, viz.: "that J. M. Dickinson is now and was at all times herein stated the duly qualified and acting receiver of the said Chicago, Rock Island and Pacific Railway Company." It is further ordered that said plaintiff be, and it is hereby permitted to sue the said receiver. And on motion of the defendants it is ordered that they be, and they are hereby allowed to file an amendment to the amended answer herein and that the amendment now filed be substituted for the amendment to said amended answers heretofore filed and it is further ordered that said plaintiff be, and it is hereby allowed to file a reply herein.

And afterwards, to-wit, on the 16th day of February, 1916, there was duly filed in said Court and cause, an Amendment to Answer, in words and figures as follows, to-wit:

AMENDMENT TO ANSWER.

Respondents for amendment to the amended answer heretofore filed in the above entitled cause, and as their first, further and separate answer and defense to the three causes of action stated in petitioner's petition, allege:

I.

That heretofore and between March 25, 1911, and January 1, 1913, the shipments of motorcycles referred to in each cause of action set forth in plaintiff's complaint, constituted the carload shipments of motorcycles consigned to the petitioner at Portland, Oregon; that on every of said shipment of motorcycles there were assessed and collected by the defendants and the petitioner paid as freight thereon, the sum of Four ($4.00) Dollars per hundred pounds, which said amount was and is the lawful rate as published and filed with the Interstate Commerce Commission applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts to Portland, Oregon.

II.

At Armory, Massachusetts, is located the factory which manufactured the motorcycles in question in this case, and the petitioner is engaged in the distribution, sale and delivery of said motorcycles to the trade at and in the vicinity of Portland, Oregon, and that the plaintiff and petitioner after the receipt of each and all of said

motorcycles did distribute, sell and deliver the same and the whole thereof to the trade at Portland, Ore., and the vicinity thereof, constituting the district in which petitioner's trade and customers were located, which includes the State of Oregon and other of the Pacific Coast states; that it was the custom of the petitioner, in the prosecution of its said business in the distribution, sale and delivery of said motorcycles, to fix a price to the trade as to each and all of said motorcycles, which included its own profit, the freight paid and the factory price to it, and that in the transaction of said business the petitioner's profit was not in any respect reduced by the amount of said freight rate or tariff applicable to said shipments; that as a matter of fact the amounts sought to be recovered by the petitioner herein is the difference in freight charges on said shipments of motorcycles based upon and calculated at the rate of Four ($4.00) Dollars per hundred pounds, and the amounts constituting the rate and tariff assessable thereon, computed at and based upon the rate found and held to be reasonable by the Interstate Commerce Commission for the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon, and that the petitioner in the management of its said business did sell said motorcycles and the whole thereof to the trade at a retail price on each motorcycle of Fifteen ($15.00) Dollars in excess of the factory list price, and which said sum was assessed and added to cover and which did cover all freight charges under said tariff so complained of herein upon each motorcycle, and which included and covered the difference in freight charges now sought as damages by the petitioner.

III.

Respondents further aver that by reason of the plan and method formed and adopted by the petitioner in the transaction of said business of the purchase, sale and distribution of said motorcycles it has, by reason of said freight rate, been damaged in no sum whatever.

W. W. COTTON,
A. W. HAWKINS,
C. E. COCHRAN,
Attorneys for Respondents.

Due service by copy admitted at Portland, Or., February 16, 1915.

JAMES E. FENTON,
Solicitor for Petitioner.

Filed February 16, 1916. G. H. MARSH, Clerk.

And afterwards, to-wit, on the 17th day of February, 1916, there was duly filed in said Court and cause, a Demurrer to Answer, in words and figures as follows, to-wit:

DEMURRER TO ANSWER.

Comes now the above named petitioner and demurs separately to the first and second further and separate answer and defense of the respondents to petitioner's first cause of action, and to the first further and separate answer and defense of the respondents to petitioner's second cause of action; and to the first and second further and separate answer and defense of the respondents to petitioner's third cause of action; and to the further and separate answer and defense of the said respondents as set forth in their amendment to their

amended answer herein, to the three causes of action of the petitioner herein.

And for grounds of said demurrer the said petitioner alleges that the said further and separate defenses do not, nor does either of them, state facts sufficient to constitute a defense or counterclaim or a confession or avoidance of the causes of action, or either of them, set forth in the petition of petitioner herein.

W. H. Bard and
James E. Fenton,
Attorneys for Petitioner.

United States of America,
State of Oregon,
County of Multnomah—ss.

I, James E. Fenton, do hereby certify that I prepared the foregoing demurrer and that the same is not interposed for the purpose of delay, and in my opinion the same is well founded in point of law.

James E. Fenton.

District of Oregon,
County of Multnomah—ss.

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this 15th day of February, 1916, by receiving a copy thereof, duly certified to as such by James E. Fenton, of Attorneys for petitioner.

C. E. Cochran,
Of Attorneys for Respondents.

Filed February 17, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on Thursday, the 17th day of February, 1916, the same being the 94th judicial day of the regular November, 1916, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ON DEMURRER TO ANSWER.

Now, at this time, February 17, 1916, this cause coming on to be heard upon the demurrer of the above named petitioner to the further and separate defenses of the respondents above named to the petition of petitioner herein, and to the last amendment to the amended answer of the respondents herein, the petitioner appearing by Will H. Bard and James E. Fenton, its attorneys, and the respondents appearing by C. E. Cochran and A. W. Hawkins, their attorneys, and the court having heard the arguments in support of and against the said demurrer, and being fully advised in the premises.

IT IS ORDERED that the said demurrer to the said last amendment to the amended answer herein be and the same is hereby sustained, and that the said demurrer to the said further and separate defenses of the respondents as set forth in the original amended answer herein, be and the same is hereby overruled.

CHAS. E. WOLVERTON,
Judge.

Filed February 17, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 17th day of February, 1916, there was duly filed in said Court and cause, a Reply, in words and figures as follows, to-wit:

REPLY.

The petitioner for its reply to the first further and separate answer and defense of the respondents to the first cause of action herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds was or is the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It denies that by the payment of the said rate of $4.00 per hundred pounds, petitioner has in no wise been damaged or injured thereby to any extent whatever, but petitioner alleges that by the payment of the said rate it has been damaged in the sum and amount alleged in its petition herein.

The said petitioner for its reply to the second further and separate answer and defense of the respondents to the first cause of action herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It denies that the said rate of $4.00 per hundred pounds charged and paid by petitioner for the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon, was a just or reasonable rate therefor, and in this behalf it alleges that the said rate was unjust and unreasonable to the amount and extent alleged in its petition herein.

The said petitioner for its reply to the first further and separate answer and defense of respondents to the second cause of action herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It denies that by the payment of said rate, petitioner has in no wise been damaged or injured thereby to any extent whatever, and in this respect it alleges that it has been damaged and injured by the payment of said rate to the extent and amount alleged in its petition herein.

The said petitioner for its reply to the first further and separate answer and defense of the respondents to the third cause of action herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds

was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It denies that by the payment of the said rate, petitioner has in no wise been damaged or injured thereby to any extent whatever, but it alleges that by the payment of said rate it has been damaged and injured to the extent and amount alleged in its petition herein.

The said petitioner for its reply to the second further and separate answer and defense of the respondents to the third cause of action herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It denies that the said rate of $4.00 per hundred pounds charged and paid by the said petitioner for the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon, was just or reasonable, but it alleges that the said rate was unjust and unreasonable to the amount and extent alleged in its petition herein.

The said petitioner for its reply to the amended answer of respondents herein, admits, alleges and denies as follows, to-wit:

I.

It denies that the rate of $4.00 per hundred pounds was the lawful rate applicable to the transportation of motorcycles in carload lots from Armory, Massachusetts, to Portland, Oregon.

II.

It admits the allegations, matters and things contained in paragraph II of the amendment to the amended answer herein, except that the said petitioner denies that it added to the retail price of each motorcycle the sum of $15.00, or that the said sum was assessed or added to cover, or that the same did cover, all freight charges under the said tariff complained of upon each motorcycle, but petitioner alleges the facts to be that it purchased all of the said motorcycles in the shipments mentioned in the petition herein from the factory at Armory, Mass., and in some instances, the number petitioner cannot state, the petitioner did not add $15.00 to the retail price of the said motorcycles, but was compelled to sell, and did sell the same less the said $15.00.

III.

Petitioner denies that by reason of the plan or method formed or adopted by petitioner in the transaction of its said business of the purchase, sale and distribution of said motorcycles, it has, by reason of said freight charges, been damaged in no sum whatever, but alleges the fact to be that it has been damaged to the amount and extent stated in its petition herein, and in addition thereto it has been damaged in a large sum of money by reason of the fact that owing to the said unreasonable freight charges made and collected by the said re-

spondents it, the said petitioner, was unable to make as many sales of said motorcycles as it could have made had the said freight charges been reasonable.

WHEREFORE, the said petitioner prays that it have judgment as demanded in its petition herein.

. . . . . .

Attorneys for Petitioner.

District of Oregon,
County of Multnomah—ss.

I, C. F. Wright, being first duly sworn, depose and say that I am vice-president of Ballou & Wright, petitioner in the above entitled cause; and that the foregoing reply is true as I verily believe.

C. F. Wright.

Subscribed and sworn to before me this 14th day of February, 1916.

(Seal) B. F. Finke,
Notary Public for the State of Oregon.

My commission expires 12/24/16.

District of Oregon,
County of Multnomah—ss.

Due service of the within reply is hereby accepted in Multnomah County, Oregon, this 14th day of February, 1916, by receiving a copy thereof, duly certified to as such by James E. Fenton, of Attorneys for Petitioner.

C. E. Cochran,
Of Attorneys for Respondents.

Filed February 17, 1916.

G. H. Marsh, Clerk.

And afterwards, to wit, on the 21st day of February, 1916, there was duly filed in said Court and cause, Findings of Fact and Conclusions of Law, in words and figures as follows, to wit:

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now at this time, February 21st, 1916, this cause coming on regularly for trial, the petitioner appearing by Will H. Bard and James E. Fenton, its attorneys, and the respondents appearing by C. E. Cochran and A. W. Hawkins, their attorneys, and the Court having heard the testimony offered at the trial of this cause, and having duly considered said testimony, and the admissions appearing in the pleadings herein, and the stipulations of counsel for petitioner and respondents, and now being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law, to-wit:

FINDINGS OF FACT.

The Court finds:

I.

That the petitioner and respondents at the times alleged in the petition herein possessed and now possesses the corporate character as alleged in said petition.

II.

That J. M. Dickinson is now and was at all the times stated in the petition, the duly qualified and acting receiver of the respondent The Chicago, Rock Island & Pacific Railway Company, a corporation.

III.

That Armory, Massachusetts, the point of origin of the freight shipments hereinafter mentioned, is on the line of The New York, New Haven & Hartford Railroad Company, and Portland, Oregon, the destination of said shipments hereinafter mentioned, is on the line of the respondent, Oregon-Washington Railroad & Navigation Company, and that said shipments moved over the lines of railroad of the respondents, which constitute a through connecting rail route from Armory, Massachusetts, to Portland, Oregon.

IV.

That the petitioner is a wholesale and retail dealer in, distributor and seller and deliverer of motorcycles at Portland, Oregon, furnishing the same to a large and extensive trade within the State of Oregon and a portion of the States of Idaho and Washington.

V.

That each of the Respondents above named was at all the times herein mentioned and is now a common carrier engaged in interstate commerce by railroad, and in the transportation of passengers and property by railroad for hire, over its lines of railway, and as such common carrier each of said respondents was at all the times herein stated, and it is now, subject to the provisions of an Act of Congress of the United States, entitled An Act to Regulate Commerce, Approved February 4, 1887, and Acts amendatory thereof and supplementary thereto.

VI.

That between the dates of March 25, 1911, and January 24, 1913, petitioner shipped from Armory, Massachusetts, to Portland, Oregon, over the lines of railway of The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, five (5) carloads of motorcycles, weighing 79,000 pounds, and the said respondents charged and collected from petitioner and petitioner paid under protest as freight thereon, the total sum of $3,160.00, based upon a commodity rate of $4.00 per cwt. That the aggregate weight of the shipments made on March 25, 1911, and March 9, 1912, was 32,300 pounds, and when these shipments were made the first class rate then in effect if applied to motorcycles in carloads, from Armory, Mass., to Portland, Ore., was $3.00 per cwt., which would amount to the total sum of $969.00. That the aggregate weights of the shipments made July 3, 1912, August 22, 1912, and January 3, 1913, respectively, was 46,700 pounds and when these last named shipments were made, the first class rate then in effect if applied to motorcycles in carloads from Armory, Mass., to Portland, Ore., was $3.70 per cwt., which amounts to the total sum of $1727.90.

VII.

About February 3, 1914, the Interstate Commerce

Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its Order and Decision in said cause set out in the petition herein, and admitted in the answer herein, in which Order and Decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipments of motor cycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

VIII.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of reparation the said Interstate Commerce Commission among other things ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central &

Hudson River Railroad Company, the Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $463.10, with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motor cycles in carloads from Armory, Mass., to Portland, Oregon.

IX.

That said report and Order of reparation were served upon the said last named respondents and an immediate demand was made upon them that they comply with the said Order of reparation and pay unto the said petitioner the sum of $463.10 with said interest thereon, as reparation, but the said respondents have, and each of them has failed, neglected and refused to comply with the said Order or to pay the said petitioner the said sum with said interest or any part thereof.

X.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipments were made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount

so charged and collected on said shipments, and the amount petitioner would have paid at the said first class rate, contemporaneously in effect, to-wit: in the sum of $463.10, with interest thereon at the rate of 6 per cent per annum from the 1st day of January, 1913.

XI.

That the sum of $300.00 is a reasonable attorney's fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

XII.

That there is now due and owing to said petitioner from the said respondents The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, the said sum of $463.10, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $300.00, a reasonable attorney's fee herein.

XIII.

That between the first day of May, 1912, and the 20th day of May, 1912, petitioner shipped from Armory, Mass., to Portland, Ore., over the lines of railway of respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific

Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, one carload of motorcycles weighing 20,615 pounds, and said respondents charged and collected from petitioner and petitioner paid under protest as freight thereon, the total sum of $824.60 based upon the commodity rate of $4.00 per cwt. That at the time the said shipment was made the first class rate if applied to motorcycles in carloads from Armory, Mass., to Portland, Ore., was $3.00 per cwt., which would amount to the total sum of $618.45.

XIV.

About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its Order and Decision in said cause set out in the petition herein, and admitted in the answer herein, in which order and decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipments of motorcycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

XV.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of Reparation the said Interstate Commerce Commission among other things ordered that said respondents The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said Complainant in said cause, the petitioner herein, the sum of $206.15 with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

XVI.

That said Report and Order of Reparation were served upon the said last named respondents and an immediate demand was made upon them that they comply with the said Order of Reparation and pay unto the said petitioner the sum of $206.15 with said interest thereon, as reparation, but the said respondents have, and each of them has failed, neglected and refused to

comply with the said Order or to pay the said petitioner the said sum with said interest or any part thereof.

XVII.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipment, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipment, and the amount petitioner would have paid at the said first class rate, contemporaneously in effect, to-wit; in the sum of $206.15, with interest thereon at the rate of 6 per cent per annum from the 1st day of January, 1913.

XVIII.

That the sum of $100.00 is a reasonable attorney's fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

XIX.

That there is now due and owing to said petitioner from said respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company and J. M. Dickinson, as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, the said sum

of $206.15, together with interest thereon at the rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00 a reasonable attorney's fee herein.

XX.

That between the 19th day of April, 1912, and the 20th day of May, 1912, petitioner shipped from Armory, Mass., to Portland, Oregon, over the lines of the railway of respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company one carload of motorcycles weighing 15,888 pounds, and the said respondents charged and collected from petitioner and petitioner paid under protest, as freight thereon, the total sum of $635.52, based upon a commodity rate of $4.00 per cwt. That when the said shipment was made the first class rate then in effect if applied to motorcycles in carloads from Armory, Mass., to Portland, Ore., was $3.00 per cwt., which would amount to the total sum of $476.64.

XXI.

About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its order and decision in said cause, set out in the petition herein, and admitted in the answer herein, in which order and

decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipment of motorcycles was made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

XXII.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of reparation the said Interstate Commerce Commission among other things ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $158.88 with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, as reparation on account of said

unreasonable rate charged for the transportation of said motor cycles in carloads from Armory, Mass., to Portland, Ore.

XXIII.

That said report and order of reparation were served upon the said last named respondents and an immediate demand was made upon them that they comply with the said Order of Reparation and pay unto the said petitioner the sum of $158.88 with said interest thereon, as reparation, but the said respondents have, and each of them has failed, neglected and refused to comply with the said Order or to pay the said petitioner the said sum with said interest or any part thereof.

XXIV.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipments, and the amount petitioner would have paid at the first class rate, contemporaneously in effect, to-wit: in the sum of $158.88, with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913.

XXV.

That the sum of $100.00 is a reasonable attorney's fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

XXVI.

That there is now due and owing to said petitioner from the said respondents The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, the said sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $100.00, a reasonable attorney's fee herein.

XXVII.

The Court finds that all of the allegations in the petition herein have been fully sustained and proved by competent evidence.

CONCLUSIONS OF LAW.

The Court finds:

I.

That the measure of damages to petitioner herein is the difference between the amount collected by the said respective respondents and paid by the said petitioner on the said respective shipments, and the amount the petitioner would have paid at the said first class rate in effect at the time the said respective shipments moved, to-wit: the said respective amounts hereinbefore stated, in the Findings of Fact herein.

II.

That the said petitioner is entitled to judgment against the said respondents the New York, New Haven

& Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, in the sum of $463.10, together with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $300.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

III.

That the said petitioner is entitled to judgment against the said respondents The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, and J. M. Dickinson, as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company in the sum of $206.15 together with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $100.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

IV.

That the said petitioner is entitled to judgment against the said respondents The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minne-

apolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, in the sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $100.00 as a reasonable attorney's fee herein, and for its costs and disbursements herein.

Let judgment be entered accordingly.

CHAS. E. WOLVERTON,
Judge.

Filed February 21, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on Monday, the 21st day of February, 1916, the same being the 97th judicial day of the regular November, 1915, term of said Court; Present, the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

JUDGMENT.

Now at this time, February 21st, 1916, this cause coming on regularly for trial, the petitioner appearing by Will H. Bard and James E. Fenton, its attorneys, and the respondents appearing by C. E. Cochran and A. W. Hawkins, their attorneys, and the Court having heard the testimony offered at the trial of this cause, and having duly considered said testimony and the admissions appearing in the pleadings herein, and the stip-

ulation of counsel for petitioner and respondents, and having heretofore made, filed and entered its findings of fact and conclusions of law herein, and now being fully advised in the premises, and it appearing to the court that the said petitioner is entitled to a judgment against said respondents in accordance with said Findings of Fact and Conclusions of law herein.

Now, therefore, upon motion of James E. Fenton, of counsel for petitioner,

IT IS ORDERED AND ADJUDGED, that the said petitioner do have and recover, and it is hereby awarded judgment against the said respondents the New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for the said sum of $463.10, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $300.00, a reasonable attorney's fee herein, and the further sum of $16.00, its costs and disbursements herein, to-wit: The total sum of $866.31, and it is ORDERED execution may issue therefor.

AND IT IS FURTHER ORDERED AND ADJUDGED that said plaintiff do have and recover judgment, and it is hereby awarded judgment against the said respondents The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago &

Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, and J. M. Dickinson as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for the said sum of $206.15, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $100.00, a reasonable attorney's fee herein, and the further sum of $16.00, its costs and disbursements herein, to-wit: The total sum of $360.96, and it is ORDERED execution may issue therefor.

AND IT IS FURTHER ORDERED AND ADJUDGED that said petitioner do have and recover judgment, and it is hereby awarded judgment against the said respondents The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company for the said sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $100.00, a reasonable attorneys' fee herein, and the further sum of $16.00, its costs and disbursements herein, to-wit: the total of sum of $304.78, and it is ORDERED execution may issue therefor.

CHAS. E. WOLVERTON,
Judge.

Filed February 21, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 21st day of February, 1916, there was duly filed in said Court and cause, Findings of Fact and Conclusions of Law requested by the defendants and refused, in words and figures as follows, to wit:

FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY DEFENDANT AND REFUSED.

Coming on to be heard upon the testimony offered at the trial, the stipulations of counsel made and the admissions appearing in the pleadings, the Court in the above case makes the following

FINDINGS OF FACT.

I.

That the plaintiff and defendants possess corporate character as alleged in the complaint.

II.

That Armory, Massachusetts, the point of origin of the freight shipments hereinafter mentioned, is on the line of The New York, New Haven & Hartford Railroad Company, and Portland, Oregon, the destination of said shipments hereinafter mentioned, is on the line of the respondent, Oregon-Washington Railroad & Navigation Company, and that said shipments moved over the lines of railroad of the respondents, which constitute a through connecting rail route from Armory, Massachusetts to Portland, Oregon.

III.

That the petitioner is a wholesale and retail dealer in, distributor and seller and deliverer of motorcycles

at Portland, Oregon, furnishing the same to a large and extensive trade within the State of Oregon and a portion of the States of Idaho and Washington.

IV.

That between the dates of March 25, 1911 and January 1, 1913, the petitioner shipped from Armory, Massachusetts to Portland, Oregon, seven carloads of motorcycles weighing 115,503 pounds, and that the freight collected by the respondents was based upon a commodity rate of $4.00 per hundred pounds, which the respondents had published and on file with the Commission, amounted to the sum of $4,620.12.

V.

About February 3, 1914, the Interstate Commerce Commission, in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, held, based upon testimony, said commodity rate of $4.00 per hundred pounds unreasonable to the extent that it exceeded the first class rate contemporaneously in effect at the time the shipments were made, and without further or any testimony bearing upon any question of damage in relation to the application of said rates, to the business of petitioner, found the petitioner was damaged in an amount equal to the difference between the amount collected and the amount it would have paid at the first class rate contemporaneously in effect, and awarded reparation upon that basis.

VI.

The Court further finds that the difference between the rate charged petitioner by respondents and the rate fixed by the Commission in said proceedings as being

the reasonable rate applicable to and assessable against the transportation of motorcycles from Armory, Massachusetts, to Portland, Oregon, computed upon the number of pounds the shipments of motorcycles weighed that moved under said tariff and within said times in specie would be the sum of $838.13, and that the only way said sums could have been arrived at by the Commission was by measuring the damage by taking the difference between the rate charged by the carrier and the rate fixed by the Commission as being reasonable.

VII.

The Court further finds that the petitioner in respect to motorcycles is a wholesale and retail dealer therein, having a contract with the manufacturer at Armory, Massachusetts, assuring to the petitioner the exclusive right to the sale and distribution of motorcycles in the State of Oregon and portions of the States of Idaho and Washington, and that the manufacturer fixed the retail price by means of public catalogues listing the same at which motorcycles were to be sold to the trade; that Ballou & Wright purchased said motorcycles f. o. b. Armory, Massachusetts, and caused the same to be shipped and delivered to them at Portland, Oregon, they paying the freight thereon; that Messrs. Ballou & Wright, petitioner herein, did sell each and all of said motorcycles to the trade within their exclusive district at said factory list price, together with the sum of Fifteen ($15.00) Dollars additional on each and every motorcycle, which was for the purpose of and did cover the freight chargeable to each motorcycle and based upon said commodity rate of $4.00 per hundred pounds, and at the time each transaction took place in the sale of

each motorcycle the purchaser was told in the regular course of the company's business that the said sum of $15.00 was the freight on said motorcycles and that the purchaser was obtaining the same at the factory list price, plus the freight, and that each and all of said motorcycles were sold the same way; that the said sum of $15.00 did in all cases, save and except to twenty-five motorcycles, cover said freight and leave a small profit besides.

VIII.

The Court further finds that all of the motorcycle dealers in the western states and western territory transacted their business of buying and selling motorcycles on the same plan adopted by the petitioner herein.

IX.

The Court further finds that in the transaction of the motorcycle business in the purchase and distribution of the same to the trade in the district for which Messrs. Ballou & Wright had the exclusive rights, that they received from the trade sufficient amounts of money to cover the freight as they paid to the respondents, and the profits of petitioner was not in any way affected by said rate complained of.

X.

The Court further finds that there is no evidence introduced respecting damages, such as loss of profits, expenses in meeting competition, loss of profits on sales in competitive territory, and under the contract giving Messrs. Ballou & Wright the exclusive agency for certain territory, that there was no competitive territory from which Messrs. Ballou & Wright were excluded.

XI.

That the amount of freight which Messrs. Ballou & Wright paid upon the entire shipments was the sum of $4620.12; that the amount of money that would have been paid if the freight were assessed at the rate fixed by the Commission as being reasonable would have been the sum of $3781.99, and that the excess charged above the Commission found reasonable rate was the sum of $838.13.

From the foregoing Findings of Fact, the Court deduces the following

CONCLUSIONS OF LAW.

First: That the measure of damages in this case is not the difference between the rate charged by the respondents for the shipments complained of in the complaint and the sum which the petitioner would have paid had the rate been assessed in the amount fixed by the Interstate Commerce Commission as reasonable.

Second: That under the method pursued by the petitioner for the transaction of the business in relation to said motorcycles, the measure of the damage suffered by petitioners is the interest at the legal rate, which in this state is six per cent upon the sum of $838.13, being the difference between the freight computed at the two rates from the time the same were paid to the carrier until the time the same was returned in the due course of business from the trade, but that there is no date or ultimate facts proved by said testimony upon the theory of the petitioner to which to apply said measure of damage.

Third: That the respondents should have judgment for their costs and disbursements of this action.

. . . . . .

Judge.

Filed February 21, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 18th day of April, 1916, there was duly filed in said Court and cause, a Bill of Exceptions, in words and figures as follows, to wit:

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on this the 16th day of February, 1916, at a regular term of the above entitled Court, held at the City of Portland, State of Oregon, the above entitled cause came on for trial before the Honorable Charles E. Wolverton, Judge presiding, when the following proceedings were had, to-wit:

A jury was waived by each of the respective parties. The petitioner applied to the Court for leave to amend its petition by inserting at the end of paragraph VII of its first cause of action the following words:

"That J. M. Dickinson is now, and was at all the times herein stated, the duly qualified and acting receiver of the said Chicago, Rock Island and Pacific Railway Company."

And also to further amend the petition by adding and inserting in the original petition the same allegation at the end of paragraph I in petitioner's second cause

of action, and to further amend the same by adding and inserting the same allegation at the end of paragraph III in petitioner's third cause of action, and for leave of Court to sue the receiver. Leave was granted and the amendments were allowed by the Court.

The respondents applied to the Court for leave to file an amendment to the amended answer. There being no objection, the application was allowed and it was agreed that the amendment be filed with the Clerk and considered a part of the answer without the formality of re-writing the amended answer and including said amendment therein.

In addition to a consideration of the order of the Interstate Commerce Commission and the decision awarding reparation pleaded in the petition and admitted by the railroad companies to have been rendered, the petitioner offered the testimony of Mr. C. W. Fulton and Mr. Samuel White, attorneys of considerable and extended experience, whose testimony tended to show that a reasonable attorney's fee, in the event that petitioner should prevail, was the sum of Five Hundred ($500.00) Dollars. The petitioner then rested its case.

The respondents offered the following testimony in support of the issues tendered by their answer:

W. J. FINKE, being called as a witness on behalf of the Respondents, testified as follows:

Name, W. J. Finke; Treasurer of Ballou & Wright; have been such since December, 1914; have been connected with Messrs. Ballou & Wright for seven years previously to February, 1916. Am familiar with the business in relation to certain shipments of motorcycles

from Armory, Massachusetts, to Portland, Oregon, between the dates of March 25, 1911, and January 1, 1913. Such shipments consisted of seven carloads.

The following question was asked the witness:

"Q. And what relationship did Messrs. Ballou & Wright have with the factory in respect to the distribution of these motorcycles?

A. Yes, we have a contract whereby we purchase motorcycles outright, and we have a stipulated territory.

Q. What is that territory?

A. It is all of Oregon and a part of Washington and a part of Idaho.

Q. State whether or not Messrs. Ballou & Wright are the exclusive agents or distributors for that territory, under your contract.

A. Yes, we are exclusive. Of course, we have our sub-agents, but they are under us.

Q. Very true, but they deal under you, or with you?

A. Yes, sir.

Q. What is the fact as to whether or not all of the shipments mentioned in the bill of complaint as having been transported by the defendants and received by Ballou & Wright at Portland were in turn and again sold by them to the trade within this district just mentioned?

A. You say, were they sold?

Q. Yes, sir.

A. Yes, we sold the machines."

The following question was asked by the Court:

"COURT: I understand you purchased these machines of the company outright?

A. Yes, sir, straight purchase.

COURT: And you had them shipped here?

A. Yes, sir.

Q. Did you pay the freight on them?

A. We paid the freight up for the machines.

Q. And when they arrived here, did you sell them out to your various customers?

A. Yes, sir.

Q. Sell them on contract between yourself and the customers?

A. Not necessarily contract. It is often just straight sale, like any other merchandise."

(Questions by Mr. Cochran continued.)

Q. What do you mean by straight sale, like any other purchase?

A. Well, for instance, a purchaser for a motorcycle might come in our store, and take the machine and give us the cash, and the transaction is closed.

Q. I see. Just simply a cash sale?

A. Yes. Of course, other machines we might sell on time, we have a contract to protect us until we get all our money, a conditional sales contract.

Q. So that in the transactions of the disposition of these machines, they are either sold for cash outright, or upon such terms as you and the party may agree upon, under what is called a conditional sales contract, title to remain in your company until paid for?

A. Yes, sir.

Q. In consideration of the sales for the motorcycles mentioned in the bill of complaint as having come from Armory, Massachusetts, did you buy them F. O. B. factory at Armory, Mass., or at Portland, Oregon?

A. F. O. B. factory at Armory, Massachusetts.

Q. Does the factory give you a list price at which you are to sell the motorcycles to the trade?

A. They did at that time. That is, I want to be understood correctly on that—they put out a Pacific Coast catalogue, and we sold at that catalogue price.

MR. FENTON: I didn't understand that answer.

A. During 1911 and 1912, during that time the factory gave us a price at which we were to sell the machines, a catalogue price, and they furnished us with catalogues, and also sent us large quantities that we could distribute; and the prices are printed in those catalogues, and we sold at those prices.

COURT: That is to say, they fixed the price at which you could sell?

A. Yes, sir.

COURT: And you sold according to those prices?

A. Yes, sir.

MR. COCHRAN continuing: Now, your profit, the profit of Messrs. Ballou & Wright, was a commission on that list price, was it not?

COURT: I understood you to say you bought outright?

A. We did. And of course the difference between what our cost was and the catalogue price was our profit.

MR. COCHRAN continuing: Q. What I am getting at is this: The contract—I don't think I care to have you produce it; I think the point can be made just as well without it—did this contract fix a price at which each machine of the particular type purchased came to

you, or did it give you a percentage off the list price as your profit?

A. Yes, it gave us a jobbers' discount that we were entitled to from the factory list price; jobbers' discount.

Q. That jobbers' discount represented your profit?

A. No, because we in turn—it did not always represent our profit, because we, of course, would sell these machines to our agents at another discount.

MR. FENTON: Not at a discount?

A. From the list.

(Mr. Cochran continuing): Q. Another trade discount, you mean?

A. Yes, another trade discount from the list.

Q. The gross price, then, including the discounts from the factory at Armory, Massachusetts, to Ballou & Wright, was always this list price published in catalogues which were available for public distribution?

A. Yes, sir.

Q. Now, when you sold a motorcycle, and all of them in turn, did you sell with reference to this catalogue list price

A. Yes, sir.

Q. What sums did you add to that price?

Mr. FENTON: Objected to upon the ground it is incompetent, irrelevant and immaterial, not bearing upon any issue involved in the case, incompetent on the question of the measure of damages, for the reason that the respondents are estopped from claiming any reduction of damages on account of any addition to the cost price.

COURT: You intend to show thereby that they added the freight to the catalogue price?

MR. COCHRAN: Yes.

The objection was sustained by the Court and an exception allowed, whereupon Mr. Cochran made the following offer:

MR. COCHRAN: I desire to prove by the witness, if allowed to answer this particular question, that he would say that, as to all the machines shipped and covered by the facts set forth in the complaint, amounting to substantially 1200 machines, they were all sold for a price $15.00 in excess of the list price, save and except as to about 25 machines, and that that $15.00 was added for the purpose of covering the freight as assessed by the railroad company, being the rate complained of before the Interstate Commerce Commission.

COURT: Do you wish to show further that all these machines that they carried were sold?

MR. COCHRAN: Yes.

MR. FENTON: It is admitted that all the machines were sold.

COURT: The court will sustain the objection. The offer was therefore denied and an exception duly allowed.

Q. Isn't it a fact, in selling each and every of these machines, except the 25, that each customer was told that the $15.00 in excess of the catalogue list price was for the purpose of covering the freight?

MR. FENTON: Objected to on the same ground as the previous question.

COURT: I will sustain that objection also, and you may have your exception. You may state your offer.

MR. COCHRAN: We offer to show, if the witness is allowed to answer the question, that each customer to

whom the $15.00 in excess of list price was charged, was told in the regular course of the trade and of the business, that that charge was for the purpose of covering the freight; and that it did cover the freight, leaving a little besides—not a very extravagant amount, but just a little bit more.

The offer was denied, to which ruling of the Court counsel for the respondent excepted and their exception was duly allowed.

Q. Mr. Finke, isn't it a fact that all of the motorcycle dealers in the western territory, western part of the United States, during the times complained of in this case, followed the same practice and custom that Messrs. Ballou & Wright have followed, in relation to buying the motorcycles F. O. B. factory, paying the freight, adding the freight to the price of the machine to the trade, and recouping themselves in that way?

MR. FENTON: Objected to on the same ground as the previous question, and upon the additional ground that what other dealers may have done is wholly immaterial to this case.

The objection was sustained by the Court, to which ruling of the Court counsel for the respondents excepted and their exception was duly allowed, whereupon Mr. Cochran made the following offer:

MR. COCHRAN: We offer to show that the practice and custom of adding the freight to the price of the motorcycle to the trade was of general application, and was indulged in by all of the standard motorcycle dealers in the West.

The offer was denied, to which ruling of the Court counsel for respondents excepted, and their exception was duly allowed.

It further appeared by the testimony that the motorcycles were purchased from the Hendee Manufacturing Company of Armory, Massachusetts.

STIPULATION.

It was stipulated and agreed between counsel for petitioner and respondents that all those respondents who have not actually filed an answer may be deemed to have joined in the answer as filed, and that such answer be deemed and taken to be the answer of all the respondents, and applicable to their rights in the case.

It was further stipulated between counsel for petitioner and respondents that paragraphs 6, 7, 8 and 9 of the petition are admitted; paragraph 10 of the petition is admitted, except as to the reasonableness of the respondent's rates; paragraph 11 is admitted except as to the respondents' rates being unjust, excessive and unreasonable; paragraph 12 is admitted, except as to the unreasonableness of the respondents' rates and as to the claim of damage.

Paragraph 13 is admitted.

Paragraph 14 is denied.

Paragraphs 15 and 15a and 16 are admitted and the corresponding allegations so named in the second and third causes of action are also admitted.

The substance of which stipulation was that the question of the reasonableness or unreasonableness of respondents' rates and the quantum and measure of the damages, if any, petitioner suffered are proper issues to be determined from the record by the Court.

The respondents offered in evidence the petition of Messrs. Ballou & Wright to the Interstate Commerce

Commission, being the petition upon which the order set forth in the complaint was based; the answers of the respondents, and a copy of the testimony that was taken before the Interstate Commerce Commission; upon which record, including the pleadings and testimony, the order and findings of fact and decision and order of reparation of the Commission were based.

This offer was objected to by petitioner on the ground that it is incompetent, irrelevant and immaterial to any issue involved in the case.

MR. COCHRAN: I offer this record for the purpose of enabling the Court to review the action of the Interstate Commerce Commission in respect to the legal conclusions deducible therefrom. The Supreme Court of the United States has held that the decision of the Commission having been given by statute prima facie evidentiary effect, precludes the Court from reviewing any question of fact; but it does not prevent the Court from drawing a different conclusion of law, and it is for the purpose of availing ourselves of the right to ask for such different conclusions of law that this evidence is offered.

COURT: I will admit it for that purpose.

The said documents were admitted and are hereto physically attached, marked "Respondents' Exhibit 1" and made a part of this Bill of Exceptions.

Thereupon, respondents rested their case.

After argument of counsel, the Court directed petitioner's counsel to prepare findings of fact in petitioner's favor, to which ruling of the Court counsel for respondents excepted, and their exception was duly allowed; whereupon, the petitioner presented findings of fact as follows:

"Now at this time, February ...., 1916, this cause coming on regularly for trial, the petitioner appearing by Will H. Bard and James E. Fenton, its attorneys, and the respondents appearing by C. E. Cochran and A. W. Hawkins, their attorneys, and the Court having heard the testimony offered at the trial of this cause, and having duly considered said testimony, and the admissions appearing in the pleadings herein, and the stipulations of counsel for petitioner and respondents, and now being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law, to-wit:

FINDINGS OF FACT.

The Court finds:

I.

That the petitioner and respondents at the times alleged in the petition herein possessed and now possesses the corporate character as alleged in said petition.

II.

That J. M. Dickinson is now and was at all the times stated in the petition, the duly qualified and acting receiver of the respondent The Chicago, Rock Island & Pacific Railway Company, a corporation.

III.

That Armory, Massachusetts, the point of origin of the freight shipments hereinafter mentioned, is on the line of The New York, New Haven & Hartford Railroad Company, and Portland, Oregon, the destination of said shipments hereinafter mentioned, is on the line of the respondent, Oregon-Washington Railroad & Nav-

igation Company, and that said shipments moved over the lines of railroad of the respondents, which constitute a through connecting rail route from Armory, Massachusetts to Portland, Oregon.

IV.

That the petitioner is a wholesale and retail dealer in, distributor and seller and deliverer of motorcycles at Portland, Oregon, furnishing the same to a large and extensive trade within the State of Oregon and a portion of the States of Idaho and Washington.

V.

That each of the respondents above named was at all the times herein mentioned and is now a common carrier engaged in interstate commerce by railroad, and in the transportation of passengers and property by railroad for hire, over its lines of railway, and as such common carrier each of said respondents was at all the times herein stated, and it is now, subject to the provisions of an Act of Congress of the United States, entitled—An Act to Regulate Commerce, approved February 4, 1887, and Acts amendatory thereof and supplementary thereto.

VI.

That between the dates of March 25, 1911 and January 24, 1913, petitioner shipped from Armory, Mass., to Portland, Oregon, over the lines of railway of The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad

Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, five (5) carloads of motorcycles, weighting 79,000 pounds, and the said respondents charged and collected from petitioner and petitioner paid under protest as freight thereon, the total sum of $3,160.00, based upon a commodity rate of $4.00 per cwt. That the aggregate weight of the shipments made on March 25, 1911 and March 9, 1912 was 32,300 pounds, and when these shipments were made the first class rate then in effect if applied to motorcycles in carloads, from Armory, Mass., to Portland, Ore., was $3.00 per cwt., which would amount to the total sum of $969.00. That the aggregate weights of the shipments made July 3, 1912, August 22, 1912 and January 3, 1913, respectively, was 46,700 pounds and when these last named shipments were made, the first class rate then in effect if applied to motorcycles in carloads from Armory, Mass., to Portland, Ore., was $3.70 per cwt. which amounts to the total sum of $1727.90.

MR. COCHRAN: I desire to object to finding No. 6 just read, and to except to its being placed in the findings adopted, and particularly to that part citing that on the shipment the payment of freight on basis of $4.00 per hundred-weight was paid under protest; and secondly, that the words, 'And when these shipments were made the first class rate then in effect if applied to motorcycles in carloads from Armory, Mass., to Portland, Oregon, was $3.00 per cwt., which would amount to the total sum of $969.00,' and also to the same words appearing in the latter part of the finding, wherein it is recited that 'The first class rate then in effect if applied

to motorcycles in carloads from Armory, Mass., to Portland, Oregon, was $3.70 per cwt., which amounts to the total sum of $1727.90,' for the reason that the evidence does not support a finding that such first class rates applied to motorcycles.

VII.

About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its Order and Decision in said cause set out in the petition herein, and admitted in the answer herein, in which Order and Decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipments of motorcycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

MR. COCHRAN: We desire to object to finding No. VII, as to the substance of it, as being immaterial, and particularly the last part, setting forth the findings of the Interstate Commerce Commission as to the measure of the damage, upon the ground that such is not the proper measure of damage under the facts and circumstances shown and offered to be shown by the testimony.

The objection was overruled, to which ruling of the Court counsel for the respondents excepted, and their exception was duly allowed.

VIII.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of Reparation the said Interstate Commerce Commission among other things ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $463.10, with interest thereon at the rate of 6 per cent per annum from January 1, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

MR. COCHRAN: I desire to object to finding No. 8 as it is immaterial, insofar as it is inconsistent with the theory of the respondents, and as more particularly set forth in their requests for findings.

IX.

That said report and Order of Reparation were served upon the said last named respondents and an immediate demand was made upon them that they comply with the said order of reparation and pay unto the said petitioner the sum of $463.10, with said interest thereon, as reparation, but the said respondents have, and each of them has failed, neglected and refused to comply with the said order or to pay the said petitioner the said sum with said interest or any part thereof.

X.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipments were made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipments, and the amount petitioner would have paid at the said first class rate, contemporaneously in effect, to-wit: in the sum of $463.10, with interest thereon at the rate of 6 per cent per annum from the 1st day of January, 1913.

MR. COCHRAN: I desire to object to finding No. X:

First, to the part finding that the rate was unreasonable to the extent that it exceeded the first class rate in effect at the time the shipments were made, from Armory, Mass., to Portland, Oregon, for that such finding is not a proper conclusion of fact from the testimony.

Secondly, we object to that part referring to the measure of the damage as being in an amount equal to the difference between the amount of freight charged and collected and the amount the petitioner would have paid had they paid at the rate fixed by the Interstate Commerce Commission, for that such is not the proper measure of the damage in cases of this kind, and particularly under the conditions and circumstances shown by the testimony in which Messrs. Ballou & Wright transacted their business.

The objection was overruled, to which ruling of the Court counsel for the respondents excepted and the exception was duly allowed.

XI.

That the sum of $300.00 is a reasonable attorneys' fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

MR. COCHRAN: We have no objection to the conclusion of fact thus formulated, except that we object to any conclusion of fact in favor of the plaintiff, including this, on the ground and for the reasons stated; that under the pleadings and case as made, the petitioner is not entitled to prevail. The objection was overruled and an exception duly allowed.

XII.

That there is now due and owing to said petitioner from the said respondents The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company,

Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, the said sum of $463.10, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $300.00, a reasonable attorney's fee herein.

MR. COCHRAN: That finding is objected to, because under the testimony the petitioner is not entitled to prevail. The objection was overruled and an exception allowed.

XIII.

That between the first day of May, 1912 and the 20th day of May, 1912, petitioner shipped from Armory, Mass., to Portland, Oregon, over the lines of railway of respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, one carload of motorcycles weighing 20,615 pounds, and said respondents charged and collected from petitioner and petitioner paid under protest as freight thereon, the total sum of $824.60, based upon the commodity rate of $4.00 per cwt. That at the time the said shipment was made the first class rate if applied to motorcycles in carloads from Armory, Mass., to Portland, Oregon, was $3.00 per cwt., which would amount to the total sum of $618.45.

XIV.

About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its Order and Decision in said cause set out in the petition herein, and admitted in the answer herein, in which Order and Decision the said Interstate Commerce Commission, among other things, decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipments of motorcycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

MR. COCHRAN: I desire to object to finding No. XIV, and particularly to the part reading as follows: 'And that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect."

It is true, however, that the Interstate Commerce Commission did make such finding; but as evidence in

the case, and as a particular measure of damage, we object to it, assigning as a reason that it is not, under the conditions and circumstances under which plaintiff transacted its business, a proper measure of damage.

COURT: The objection is overruled and an exception is duly allowed.

XV.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of Reparation the said Interstate Commerce Commission, among other things, ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $206.15, with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

MR. COCHRAN: We object to finding No. 15, because it is not a conclusion of fact based upon the proper measure of damage in such case.

The objection is overruled and an exception is allowed.

XVI.

That said report and order of reparation were served upon the said last named respondents and an immediate demand was made upon them that they comply with the said order of reparation and pay unto the said petitioner the sum of $206.15, with said interest thereon as reparation, but the said respondents have, and each of them has failed, neglected and refused to comply with the said order or to pay the said petitioner the said sum with said interest or any part thereof.

XVII.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipment, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipment, and the amount petitioner would have paid at the said first class rate, contemporaneously in effect, to-wit: in the sum of $206.15, with interest thereon at the rate of 6 per cent per annum from the 1st day of January, 1913.

MR. COCHRAN: I desire to object to Finding No. 17 on the ground, first, that a finding that the rate was unreasonable to the extent it exceeded the first class rate is unsupported by the testimony, or by any proper conclusion of fact deducible therefrom; and to object to

the second portion of the finding, that part referring to the measure of the damage and reading as follows: 'That petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipment, and the amount petitioner would have paid at the said first class rate, contemporaneously in effect,' for the reason that, in this case and in cases of like type, such is not the proper measure of damage, particularly in view of the facts and circumstances shown in evidence as to the manner in which plaintiff transacted its business, on account of having added the freight to the selling price; in each and every instance of the sale of motorcycles, with the exception of 25, the purchaser paid such freight, and fully and entirely compensated the plaintiff for any damage or loss arising out of the transaction of securing the motorcycles from the manufacturer and passing them on in course of business to the consumer.

The objection is overruled, to which ruling of the Court counsel for respondent excepted and their exception was duly allowed.

XVIII.

That the sum of $100.00 is a reasonable attorney's fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

We object to this finding because under the case as made, the petitioner is not entitled to prevail. The objection is overruled and an exception allowed.

XIX.

That there is now due and owing to said petitioner from said respondents, The New York, New Haven &

Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company and J. M. Dickinson, as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, the said sum of $206.15, together with interest thereon at the rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00, a reasonable attorney's fee herein.

MR. COCHRAN: We object to that generally, upon the ground that it is not supported by the testimony.

The objection is overruled and an exception allowed.

XX.

That between the 19th day of April, 1912, and the 20th day of May, 1912, petitioner shipped from Armory, Mass., to Portland, Oregon, over the lines of railway of respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company one carload of motorcycles weighing 15,888 pounds, and the said respondents charged and collected from petitioner and petitioner paid under protest, as freight thereon, the total sum of $635.52, based upon a commodity rate of $4.00 per cwt. That when the said shipment was made the first class rate then in effect if applied to motor-

cycles in carloads from Armory, Mass., to Portland, Oregon, was $3.00 per cwt. which would amount to the total sum of $476.64.

XXI.

About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendant, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its order and decision in said cause, set out in the petition herein, and admitted in the answer herein, in which order and decision the said Interstate Commerce Commission, among other things, decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipment of motorcycles was made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

MR COCHRAN: We object to the finding as immaterial, and as not a proper conclusion of fact to be drawn from the evidence, in that it seems to find a damage based on an erroneous measure of damage.

The objection was overruled and an exception duly allowed.

XXII.

About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its order of reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said order of reparation the said Interstate Commerce Commission, among other things, ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $158.88, with interest theron at the rate of 6 per cent per annum from January 1st, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

MR. COCHRAN: We object to that finding upon the same grounds as heretofore stated to the same finding of fact as to the first and second causes of action, and particularly the erroneous measure of damage adopted by which to arrive at the amount of reparation. The objection was overruled and an exception duly allowed.

XXIII.

That said report and order of reparation were served upon the said last named respondents and an immediate

demand was made upon them that they comply with the said order of reparation and pay unto the said petitioner the sum of $158.88, with said interest thereon, as reparation, but the said respondents have, and each of them has failed, neglected and refused to comply with the said order or to pay the said petitioner the said sum with said interest or any part thereof.

XXIV.

The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it exceeded the first class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipments, and the amount petitioner would have paid at the first class rate, contemporaneously in effect, to-wit: in the sum of $158.88, with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913.

MR. COCHRAN: We object to this finding on the ground that it is an improper conclusion of fact from the evidence, in that it proceeds upon an erroneous measure of damage in cases of this kind, and under the conditions and circumstances by which the plaintiff transacted its business in respect to the sale and distribution of motorcycles. The objection was overruled and an exception duly allowed.

XXV.

That the sum of $100.00 is a reasonable attorney's fee in this action to be taxed against the said respondents and collected as a part of the costs herein.

MR. COCHRAN: Objected to by respondents because under the case as made the plaintiff is not entitled to prevail, and such finding would, therefore, be immaterial. The objection was overruled and an exception duly allowed.

XXVI.

That there is now due and owing to said petitioner from the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, the said sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from January 1st, 1913, and the further sum of $100.00 a reasonable attorney's fee herein.

MR. COCHRAN: This finding is objected to because plaintiff is not entitled to prevail under the evidence, the finding is therefore immaterial. The objection was overruled and an exception duly allowed.

XXVII.

The Court finds that all of the allegations in the petition herein have been fully sustained and proved by competent evidence.

MR. COCHRAN: We object to finding 27 generally upon the ground that the allegations of the petition

have not, in a substantial way, been supported by the evidence.

The objection was overruled and an exception duly allowed.

CONCLUSIONS OF LAW.

The Court finds:

I.

That the measure of damages to petitioner herein is the difference between the amount collected by the said respective respondents and paid by the said petitioner on the said respective shipments, and the amount the petitioner would have paid at the said first class rate in effect at the time the said respective shipments moved, to-wit: the said respective amounts hereinbefore stated, in the findings of fact herein.

MR. COCHRAN: We desire to object to Conclusion of Law No. 1, and to request the Court to find in lieu thereof the following:

That the measure of damages in this case is not the difference between the rate charged by the respondents for the shipments complained of in the complaint and the sum which the petitioner would have paid had the rate been assessed in the amount fixed by the Interstate Commerce Commission as reasonable.

And upon the further ground that the finding as requested by plaintiff does not state a proper conclusion of law as to the measure of damage.

The objection was overruled and an exception allowed respondents.

II.

That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, in the sum of $463.10, together with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $300.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

MR. COCHRAN: We object to that finding because it is not a proper conclusion of law deducible from the testimony or from any proper finding of fact based thereon. The objection is overruled and an exception duly allowed.

III.

That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, and J. M. Dickinson as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Orefon-Washington Railroad & Navigation Company in the sum of $206.15 together with interest thereon at the

rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $100.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

MR. COCHRAN: We object to that conclusion for the reasons stated in support of our objection to conclusion No. 2.

The objection is overruled, and an exception duly allowed.

IV.

That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, in the sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from the first day of January, 1913, and the further sum of $100.00 as a reasonable attorney's fee herein, and for its costs and disbursements herein.

MR. COCHRAN: We object to Conclusion No. IV, for the reasons assigned in support of our objection to conclusion of law No. 11.

Thereupon, the respondents requested the Court to make and adopt Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY DEFENDANTS AND RESPONDENTS.

Coming on to be heard upon the testimony offered at the trial, the stipulations of counsel made and the admissions appearing in the pleadings, the Court in the above case makes the following

FINDINGS OF FACT.

I.

That the plaintiff and defendants possess a corporate character as alleged in the complaint.

II.

That Armory, Massachusetts, the point of origin of the freight shipments hereinafter mentioned, is on the line of The New York, New Haven & Hartford Railroad Company, and Portland, Oregon, the destination of said shipments hereinafter mentioned, is on the line of the respondent, Oregon-Washington Railroad & Navigation Company, and that said shipments moved over the lines of railroad of the respondents, which constitute a through connecting rail route from Armory, Massachusetts to Portland, Oregon.

III.

That the petitioner is a wholesale and retail dealer in, distributor and seller and deliverer of motorcycles

at Portland, Oregon, furnishing the same to a large and extensive trade within the state of Oregon and a portion of the states of Idaho and Washington.

IV.

That between the dates of March 25, 1911, and January 1, 1913, the petitioner shipped from Armory, Massachusetts, to Portland, Oregon, seven carloads of motorcycles weighing 115,503 pounds, and that the freight collected by the respondents was based upon a commodity rate of $4.00 per hundred pounds, which the respondents had published and on file with the commission, amounted to the sum of $4,620.12.

To the refusal of the Court to find as a fact the foregoing, the respondent excepted and its exception was duly allowed.

V.

About February 3, 1914, the Interstate Commerce Commission, in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, held, based upon testimony, said commodity rate of $4.00 per hundred pounds unreasonable to the extent that it exceeded the first class rate contemporaneously in effect at the time the shipments were made, and without further or any testimony bearing upon any question of damage in relation to the application of said rates, to the business of petitioner, found the petitioner was damaged in an amount equal to the difference between the amount collected and the amount it would have paid at the first class rate contemporaneously in effect, and awarded reparation upon that basis.

VI.

The Court further finds that the difference between the rate charged petitioner by respondents and the rate fixed by the Commission in said proceedings as being the reasonable rate applicable to and assessable against the transportation of motorcycles from Armory, Massachusetts, to Portland, Oregon, computed upon the number of pounds the shipments of motorcycles weighed that moved under said tariff and within said times in specie would be the sum of $838.13, and that the only way said sums could have been arrived at by the Commission was by measuring the damage by taking the difference between the rate charged by the carrier and the rate fixed by the Commission as being reasonable.

To the refusal of the Court to adopt the foregoing finding the respondent excepted and its exception was duly allowed.

VII.

The Court further finds that the petitioner in respect to motorcycles is a wholesale and retail dealer therein, having a contract with the manufacturer at Armory, Massachusetts, assuring to the petitioner the exclusive right to the sale and distribution of motorcycles in the state of Oregon and portions of the states of Idaho and Washington, and that the manufacturer fixed the retail price by means of public catalogues listing the same at which motorcycles were to be sold to the trade; that Ballou & Wright purchased said motorcycles f. o. b. Armory, Massachusetts, and caused the same to be shipped and delivered to them at Portland, Oregon, they paying the freight thereon; that Messrs.

Ballou & Wright, petitioner herein, did sell each and all of said motorcycles to the trade within their exclusive district at said factory list price, together with the sum of Fifteen (15.00) Dollars additional on each and every motorcycle, which was for the purpose of and did cover the freight chargeable to each motorcycle and based upon said commodity rate of $4.00 per hundred pounds, and at the time each transaction took place in the sale of each motorcycle the purchaser was told in the regular course of the company's business that the said sum of $15.00 was the freight on said motorcycles and that the purchaser was obtaining the same at the factory list price, plus the freight, and that each and all of said motorcycles were sold the same way; that the said sum of $15.00 did in all cases, save and except the twenty-five motorcycles, cover said freight and leave a small profit besides.

To the refusal of the Court to adopt the foregoing finding, the respondent excepted and its exception was duly allowed.

VIII.

The Court further finds that all of the motorcycle dealers in the western states and western territory transacted their business of buying and selling motorcycles on the same plan adopted by the petitioner herein.

To the refusal of the Court to adopt the foregoing finding, the respondent excepts and its exception is duly allowed.

IX.

The Court further finds that in the transaction of the motorcycle business in the purchase and distribution

of the same to the trade in the district for which Messrs. Ballou & Wright had the exclusive rights, that they received from the trade sufficient amounts of money to cover the freight as they paid to the respondents, and the profits of petitioner was not in any way affected by said rate complained of.

To the refusal of the Court to adopt the foregoing Finding, the respondent excepted and its exception was duly allowed.

X.

The Court further finds that there is no evidence introduced respecting damages, such as loss of profits, expenses in meeting competition, loss of profits on sales in competitive territory, and under the contract giving Messrs. Ballou & Wright the exclusive agency for certain territory, that there was no competitive territory from which Messrs. Ballou & Wright were excluded.

To the refusal of the Court to adopt the foregoing Finding, the respondent excepted and its exception was duly allowed.

XI.

That the amount of freight which Messrs. Ballou & Wright paid upon the entire shipments was the sum of $4620.12; that the amount of money that would have been paid if the freight were assessed at the rate fixed by the Commission as being reasonable would have been the sum of $3781.99, and that the excess charged above the Commission found reasonable rate was the sum of $838.13.

To the refusal of the Court to adopt the foregoing finding, the respondent excepted and its exception was duly allowed.

From the foregoing Findings of Fact, the Court deduces the following

CONCLUSIONS OF LAW:

First: That the measures of damages in this case is not the difference between the rate charged by the respondents for the shipments complained of in the complaint and the sum which the petitioner would have paid had the rate been assessed in the amount fixed by the Interstate Commerce Commission as reasonable.

To the refusal of the Court to adopt the foregoing Conclusion of Law, the respondents excepted and its exception was duly allowed.

Second: That under the method pursued by the petitioner for the transaction of the business in relation to said motorcycles, the measure of the damage suffered by petitioners is the interest at the legal rate, which in this state is six per cent upon the sum of $838.13, being the difference between the freight computed at the two rates from the time the same were paid to the carrier until the time the same was returned in the due course of business from the trade, but that there is no date or ultimate facts proved by said testimony upon the theory of the petitioner to which to apply said measure of damage.

To the refusal of the Court to adopt the foregoing Conclusion of Law, the respondent excepted and its exception was duly allowed.

Third: That the respondents should have judgment for their costs and disbursements of this action.

To the refusal of the Court to adopt the foregoing Conclusion of Law, the respondent excepted and its exception was duly allowed.

Thereupon, the Court adopted and signed the Findings of Fact and Conclusions of law presented by the petitioner, and declined to sign and adopt the Findings of Fact and Conclusions of Law presented by the respondents, to which action of the Court respondents excepted and their exception was duly allowed.

Based upon the Findings of Fact and Conclusions of Law adopted by the Court a judgment was entered against the respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, for the sum of $463.10, together with interest thereon at the rate of six per cent (6%) per annum from January 1, 1913, and the further sum of $300.00 as a reasonable attorney's fee, and the further sum of $16.00 costs and disbursements, aggregating $866.31.

A further judgment was entered in favor of the petitioner and against the respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company and J. M. Dickinson as receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for the sum of $206.15, together with interest thereon

at the rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00 as a reasonable attorney's fee and the further sum of $16.00 costs and disbursements herein, aggregating the sum of $360.96.

A further judgment was entered in favor of petitioner and against the respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company for the sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00 as reasonable attorney's fees and the further sum of $16.00 as costs and disbursements, aggregating the sum of $304.78.

And now because the foregoing matters and things are not of record in this cause, I, Chas. E. Wolverton, District Judge and the Judge trying the above entitled action in the District Court of the United States for District of Oregon, hereby certify that the foregoing Bill of Exceptions truly states the proceedings had before me on the trial of the above entitled action, and contains all the evidence, both oral and written, introduced by either of the said parties throughout said trial, and the Findings of Fact and Conclusions of Law presented by the respondents and refusals by the Court, and the Findings of Fact and Conclusions of Law presented by the petitioner and adopted by the Court, and the respondents' exceptions thereto, and that the exceptions taken by the respondents therein were duly taken and

allowed, and that said Bill of Exceptions was duly prepared and submitted within the time allowed by the rules of the Court, as extended by the special order of this Court. Said Bill of Exceptions is here now signed, settled as and for the Bill of Exceptions in the above entitled action, and the same is ordered to be made a part of the record thereof.

CHAS. E. WOLVERTON,
Judge.

Our No. 373.

Before the Interstate Commerce Commission.

Interstate Commerce Attorney Mar. 24, 1913 Chicago, Ill. Un. Pac. Sys.-So.Pac.Co.	Docket No. 5616 Filed Mar. 10, 1913 Interstate Commerce Commission

Ballou & Wright

vs.

The New York, New Haven & Hartford Railroad Company,
Boston & Albany Railroad Company,
Boston & Maine Railroad,
The New York Central & Hudson River Railroad Company,
The Michigan Central Railroad Company,
Central New England Railway Company,
Erie Railroad Company,
Chicago & Erie Railroad Company,
The Canadian Pacific Railway Company,
Minneapolis, St. Paul & Sault Ste. Marie Railway Company,
Chicago & North Western Railway Company,
The Chicago, Rock Island & Pacific Railway Company,
Union Pacific Railroad Company,
Oregon Short Line Railroad Company,
Spokane International Railway Company,
Oregon-Washington Railroad & Navigation Company.

O W

Chas. H. Bates
Received
Mar. 21, 1913
Official copy
Served by I. C. C.

The petition of the above named complainant respectfully shows:

1. That complainant is a corporation, wholesale dealer in motorcycles, and is located in the City of Portland, State of Oregon.

2. That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between points in the State of Massachusetts and points in the state of Oregon, and as such common carriers are subject to the provisions of the Act to regulate Commerce, approved February 4th, 1887, and Acts amendatory thereof or supplementary thereto.

3. That this complainant on the several dates hereinafter shown caused to be delivered to the New York, New Haven & Hartford Railroad Company at Armory, Massachusetts, certain carload shipments of motorcycles as hereinafter shown for transportation to this complainant at Portland, Oregon.

4. That on said shipments said defendants assessed and this complainant paid charges based on rate of $4.00 per 100 cwt. with a minimum carload weight of 15,000 pounds, this complainant having suffered thereby in the sum of $1732.54, representing the difference between charges assessed and what would have resulted from application of rate of $2.50 per 100 pounds with minimum carload weight of 15,000 pounds contrary to and in violation of said Act.

5. That Trans-Continental Freight Bureau Westbound Tariff 4-1, I. C. C. 942, issued by R. H. Countiss, carries a less carload rate of $4.50 per 100 pounds

and a carload rate of $4.00 per 100 pounds with a 15,000 pound carload weight on motorcycles.

6. That said Schedule I. C. C. 942 also carries less carload rate of $4.50 per 100 pounds on bicycles crated and carload rate of $2.50 per 100 pounds with a 10,000 pound carload minimum.

7. That the difference between carload rate of $4.00 and less carload rate of $4.50 on motorcycles results in an unnatural spread and is unduly discriminatory as between carload and less carload freight, and as such is contrary to and in violation of said Act, especially Section 3 thereof.

8. That the rate assessed on the shipments subject of this complaint is in itself and generally in consideration of the services performed and especially with reference to carload rate of $2.50 per 100 pounds on bicycles, unjust and unreasonable and as such contrary to and in violation of said Act, especially Section 1 thereof, and

9. That a just and reasonable rate applicable to said shipments would be not to exceed $2.50 per 100 pounds with a 15,000 pound carload minimum.

10. That here follows a detailed statement of the shipment subject of this complaint, showing:

1. Point of shipment.
2. Waybill number and date.
3. Car number and initial.
4. Carriers at interest.
5. Weight and charges assessed.
6. Claimed reparation.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 8/22/12	Springfield CH-3212-8/23/12	M&O-18688	New York, New Haven & Hartford Railroad Company (Springfield), Boston & Albany Railroad Company (Albany), New York Central & Hudson River Railroad Company (Buffalo), Michigan Central Railroad Company (Chicago), Chicago & North Western Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon - Washington Railroad & Navigation Company (Portland).
Armory, Mass. 7/3/12	Springfield CH-397-7/4/12	LS&MS-59489	"
Armory, Mass. 3/9/12	Springfield CH-675-3/10/12	St.P.-75858	"
Armory, Mass. 1/3/13	Springfield CH-671-1/4/13	C-62384	"
Armory, Mass. 3/25/11	Springfield CH-5730-3/26/11	NYNH-71635	"

WEIGHT		CHARGES	DATE OF DEL.	OVERCHARGE
15,000 lbs.		600.00		
15,000 lbs.		600.00		
15,000 lbs.		600.00		
16,700 lbs.		668.00		
17,300 lbs.		692.00	4/3/11	
79,000 lbs.		3160.00		
Should be 79,000 lbs.	2.50	1975.00		1185.00

1st Cause of Action, allowed $3.70 rate.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 5/1/12	Maybrook 570-6/4/12	Erie-69062	New York, New Haven & Hartford Railroad Company (Hartford), Central New England Railway Company (Maybrook), Erie Railroad Company (Marion), Chicago & Erie Railroad Company (Chicago), Chicago, Rock Island & Pacific Railway Company (Omaha), Union Pacific Railroad Company (Granger), Oregon Short Line Railroad Company (Huntington), Oregon-Washington Railroad & Navigation Company (Portland).

WEIGHT		CHARGES	OVERCHARGE
20,615 lbs.		824.60	
Should be 20,615 lbs.	2.50	515.38	309.22

2d Cause of Action, allowed $3.00 rate.

FROM	WAYBILL	CAR	VIA
Armory, Mass. 4/19/12	F-203-4/19/12	NH-85911	New York, New Haven & Hartford Railroad Company (Fitchburg), Boston & Maine Railroad (Newport), Canadian Pacific Railway Company (Sault Ste. Marie), Minneapolis, St. Paul & Sault Ste. Marie Railway Company (Portal), Canadian Pacific Railway Company (Kingsgate), Spokane International Railway Company (Spokane), Oregon-Washington R. R. & Navigation Company (Portland).

WEIGHT		CHARGES	OVERCHARGE
15,888 lbs.		635.52	
Should be 15,888 lbs.	2.50	397.20	$238.32

Total overcharge, $1,732.54

3rd Cause of Action, allowed $3.00 rate.

11. WHEREFORE, complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation, an order be made commanding said defendants and each of them to cease and desist from the aforesaid violation of said Act to Regulate Commerce, and establish and put in force and apply as maximum in future to the transportation of motorcycles in carloads between Armory, Mass., and Portland, Ore., in lieu of rate of $4.00 per 100 pounds charged, rate of $2.50 per 100 pounds with a 15,000 pound carload minimum or such other rate as the Commission may deem reasonable and just, and also pay to complainant by way of reparation for the unlawful charges hereinbefore described, the sum of $1732.54 or such other sum as, in view of the evidence to be adduced herein, the Commission may consider the complainant entitled to, and that such other and further order or orders be made as the Commission may consider proper in the premises and complainant's cause may appear to require.

BALLOU & WRIGHT,

By.....

Portland, Oregon.

Dated at San Francisco, February 26, 1913.

J. O. BRACKEN,
Attorney for Complainant,
656 Pacific Building,
San Francisco, Cal.

(Title omitted)

ANSWER

On behalf of Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company.

Come now defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, appearing for themselves alone, and for answer to complainant's petition herein, admit, deny, and allege as follows, to-wit:

I.

Admit the allegations contained in paragraph I of the petition.

II.

Admit the allegations contained in paragraph II of the petition.

III.

For answer to paragraph III of the petition, these defendants admit that certain carload shipments of motor cycles were transported by defendants from Armory, Massachusetts, to Portland, Oregon. The detail of these shipments, however, cannot at this time be checked and verified and by reason thereof these defendants demand that plaintiffs be required to produce at the trial of this case, their freight bills, bills of lading, etc., substantiating their contention that such shipments actually moved via the lines of these defendants.

IV.

Deny each and every allegation contained in paragraph IV of the petition, except that these defendants admit that charges were assessed on basis of $4.00 per hundred pounds, carload minimum 15,000 pounds, on such shipments as were transported by these defendants, this being the lawful rate on motorcycles, carloads, from Armory, Massachusetts, to Portland, Oregon. These defendants specifically deny that complainants or anyone else have been damaged therefrom in the sum of $1732.54, or any other sum or at all, representing difference between charges assessed and what would have resulted from application of rate of $2.50 per hundred pounds, or any other amount whatever, or at all.

V.

Answering paragraphs V and VI of the petition, these defendants respectfully submit that the Trans-Continental Tariffs on file with the Interstate Commerce Commission as required by law, are the best and most accurate evidence of what is therein contained, and these defendants therefore refer to said Transcontinental Tariffs as showing what rates are and were in effect at the time said shipments moved.

VI.

Deny each and every allegation contained in paragraph VII of the petition, except these defendants admit that the difference between carload rate of $4.00 and less carload rate of $4.50 on motorcycles is not sufficiently great, due to the fact that less carload rate is abnormally low. This is one of the inconsistencies in

the tariff that has not been corrected although the subject has been docketed for consideration at the next Trans-Continental Bureau meeting, and these defendants allege that instead of reducing the carload rate as prayed for in the petition, it will be more reasonable and consistent to advance the less carload rate to one and one-half times first class.

VII.

Deny each and every allegation contained in paragraphs VIII and IX of the petition. These defendants specifically deny that a just or reasonable rate on motorcycles would be not to exceed $2.50 per hundred pounds, minimum 15,000 pounds, from and to the points mentioned in complainants' petition, but allege that the present rates in force and effect are just and reasonable.

VIII.

Deny each and every allegation contained in paragraph X of the petition. These defendants specifically deny that complainants on shipments set forth in paragraph X, have been overcharged in the sum of $1732.54 or in any other sum or amount whatsoever, or at all.

IX.

Deny each and every allegation contained in paragraph XI of the petition, and these defendants specifically deny that a rate not to exceed $2.50 per hundred pounds should be established for the future. Deny that complainants are entitled to any reparation whatsoever in this case and deny that reparation in any amount or sum whatever should be allowed.

WHEREFORE, having fully answered complainants' petition herein, these defendants demand that said petition be dismissed.

H. A. Scandrett.
N. H. Loomis.
P. L. Williams.
A. C. Spencer.

State of Oregon,
County of Multnomah—ss.

I, H. E. Lounsberry, being first duly sworn, on oath depose and say that I am General Freight Agent of the Oregon-Washington Railroad & Navigation Company. That I have caused the foregoing answer to be prepared on behalf of the Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, that I know the contents thereof and the same is true as I verily believe.

H. E. Lounsberry.

Subscribed and sworn to before me this 15th day of April, 1913.

John P. Hannon,
(SEAL) Notary Public for Oregon.

(Title omitted)

ANSWER

of The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company.

These defendants, for answer to the complaint in the above entitled cause, admit, subject to verification from published tariffs, the rates set forth in the complaint, but deny that same are unjust or unreasonable, unlawful or discriminatory in any respect; deny that complainants are entitled to any relief in the premises, and pray that the complaint may be dismissed.

By O. E. Butterfield,
Assistant General Solicitor,
La Salle Street Station,
Chicago, Illinois.

Clyde Brown,
Of Counsel.

(Title omitted)

ANSWER

1.

The defendants the Minneapolis, St. Paul & Sault Ste. Marie Railway Company and Spokane International Railway Company for their separate answer to the above entitled proceeding state that they admit paragraphs one, two and three of said petition.

2.

Defendants admit that the rates charged on carload shipments of motor cycles are correctly stated in paragraph four of the complaint.

3.

The defendants the M. St. P. & S. S. M. Ry. Co. and S. I. R. R. Co. state that only one shipment named in the petition moved via their lines and that in all cases these defendants are intermediate lines.

4.

Further answering these defendants state that the Trans-Continental Freight Bureau has under consideration the adjustment of these rates and that such adjustment may obviate the necessity for a hearing and therefore asks that said case be not set for hearing at an early date.

5.

As to all other allegations, this defendant makes a general denial and leaves complainant to its proof.

WHEREFORE, having fully answered, this defendant asks that as to it said complaint be dismissed.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY,
By Albert H. Lossow,
Attorney for defendant,
Soo Building, Minneapolis, Minn.

(Title omitted)

Defendant, the Chicago, Rock Island & Pacific Railway Company, for answer to the complaint herein, respectfully states:

I.

It is without any information whatsoever concerning the allegations of paragraph 1, and it leaves complainants to their proof thereof.

II.

Defendant admits that it is a common carrier, engaged in interstate commerce.

III.

Defendant neither admits nor denies the allegations of paragraph 3, but leaves complainants to their proof thereof.

IV.

If said shipments moved, as alleged, defendant denies that complainants suffered in the sum of $1732.54, or any other sum.

V.

For answer to the allegations of paragraph V, defendant refers to the published tariffs filed with this Commission as affording the best and most trustworthy answer thereto.

VI.

For answer to the allegations of paragraph 6, defendant refers to the published tariffs filed with this Commission as affording the best and most trustworthy answer thereto.

VII.

Defendant denies that the difference between the carload and less than carload rates on motorcycles herein alluded to results in an unnatural spread, as is alleged, or that it is unduly discriminatory as between carload and less than carload freight, or is in violation of Section 3 of the Act to Regulate Commerce.

VIII.

Defendant denies each and every allegation contained in paragraph 8.

IX.

Defendant denies each and every allegation contained in paragraph 9.

X.

Defendant neither admits nor denies that shipments were made, as described in paragraph 10, and it leaves complainants to their proof thereof.

XI.

Defendant denies that the complainants are entitled to the relief prayed for, or to any part thereof, or to any other or further relief, or to any relief whatsoever.

WHEREFORE, having thus fully answered, defendant prays that it be dismissed.

THE CHICAGO, ROCK ISLAND &
PACIFIC RAILWAY COMPANY,
By C. F. Dickinson, its Attorney.

(Title omitted)

ANSWER

Of Defendant Chicago & North Western Railway Company.

Comes now the defendant, Chicago & North Western Railway Company, and for answer to the complaint of complainant alleges:

I.

As to the allegations contained in paragraph I of said complaint, defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

II.

Defendant admits the allegations contained in paragraph 2 of said complaint.

III.

As to the allegations contained in paragraphs 3 and 4 of said complaint, this defendant has not and cannot obtain sufficient knowledge or information upon which to base a belief.

IV.

Defendant admits the allegations contained in paragraphs 5 and 6 of said complaint.

V.

Defendant admits the allegations contained in paragraphs 7, 8 and 9 of said complaint.

VI.

As to the allegations contained in paragraph 10 of said complaint, this defendant has not and cannot ob-

tain sufficient knowledge or information upon which to base a belief.

WHEREFORE, defendant having fully answered, prays that said complaint may be dismissed.

CHICAGO & NORTH WESTERN
RAILWAY COMPANY,
By C. C. Wright,
Robert H. Widdicome,
Attorneys.

(Title omitted)

The Canadian Pacific Railway Company, one of the defendants mentioned in the above complaint, for answer to the same respectfully states:

1. That it admits the allegations contained in paragraph 1 of the said complaint.

2. That it admits the allegations contained in paragraph 2 of the said complaint.

3. That it has no knowledge of the allegations contained in paragraph 3 of the said complaint.

4. That in regard to the rates mentioned in paragraphs 4, 5, 6, 7 and 8 of the said complaint, this defendant denies that the said rates are unjust, unreasonable or discriminatory or contrary to the Interstate Commerce Act or amendments thereto and that it would respectfully refer the Commission to the Tariffs on file with it setting forth these rates.

5. That it denies the allegations contained in paragraph 9 of the said complaint and states that the rates shown in the tariffs above referred to are reasonable.

6. That it is unable to admit or deny the allegations contained in paragraph 10 of the said complaint, but that if any overcharge exists in respect of any shipments which moved via its line and the charges have been collected in excess of the published tariffs filed with the Commission, this defendant is willing to join in the refund of any such excess.

7. That being an intermediate carrier, it had no voice in the making of the rates now complained of and could not change them.

Dated at Montreal this 30th day of April, 1913.

C. W. Beatty,
General Solicitor.

(Title omitted)

ANSWER

Of defendants The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Central New England Railroad Company.

The above named defendants for answer to the complaint in this proceeding respectfully state, but only in their own behalf:

1. That as to paragraph 1 said defendants have no knowledge or information upon which to form a belief, and, therefore, leave the proof of the same to the complainant.

2. That paragraphs II and III are admitted.

3. That as to paragraphs IV, V and VI said defendants aver that the charges collected for the transportation of shipments of motorcycles were in accord-

ance with the lawful published tariffs on file with the Interstate Commerce Commission, some of which are enumerated in the above mentioned paragraphs, and the same speak for themselves.

4. That as to paragraphs VII and VIII said defendants deny that the rates charged and collected are unjust, unreasonable or unduly discriminatory.

WHEREFORE, said defendants pray that as to them the complaint in this proceeding may be dismissed.

THE NEW YORK, NEW HAVEN &
HARTFORD RAILROAD COMPANY,
BOSTON & MAINE RAILROAD,
CENTRAL NEW ENGLAND RY. CO.,
S. S. Perry,
Assistant to Vice-President.

(Title omitted)

Erie Railroad Company and Chicago and Erie Railroad Company, for their answer to the petition of the above named complainant, respectfully state:

1. They deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered one and three of said petition, and ask that if deemed material, due proof thereof be made.

2. Being without present available information thereon, they deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered four of said petition, and ask that due proof thereof be made.

3. They deny the allegations contained in paragraphs numbered seven, eight and nine of said petition.

4. Not having been able within the time available, to locate and check the shipment which, in paragraph ten, it is alleged was made over their respective lines, they deny the allegation in that paragraph and ask that due proof be made thereof.

For a further defense they beg to refer to the answer filed, or to be filed, by the carriers reaching the points of destination referred to with their own rails.

WHEREFORE, defendants, Erie Railroad Company and Chicago & Erie Railroad Company, pray that the petition be dismissed and the prayer for reparation be denied.

Dated New York, N. Y.,
April 8, 1913.

ERIE RAILROAD COMPANY,
By D. L. Gray,
Assistant Freight Traffic Manager.

CHICAGO & ERIE RAILROAD COMPANY,
By D. L. Gray,
Assistant Freight Traffic Manager.

T. H. Burgess,
M. E. Pierce,
Attorneys for Respondent.

RESPONDENT'S EX 1.

(Title omitted)

San Francisco, California
September 6, 1913.
12:25 P.M.

Before:

Commissioner JOHN H. MARBLE.

Met pursuant to notice.

APPEARANCES:

J. O. BRACKEN, (Pacific Building, San Francisco, California), appearing for complainant.

GEORGE D. SQUIRES, (San Francisco, California), and R. C. FYFE, (1818 Transportation Building, Chicago, Illinois), appearing for Oregon-Washington Railroad & Navigation Company, defendant.

WITNESSES

PROCEEDINGS

Commissioner Marble: We will take the appearance for complainants in the case of Ballou & Wright, No. 5616.

Mr. Bracken: I represent them.

Whereupon, the following appearance was also entered:

GEORGE D. SQUIRES and R. C. FYFE, for Oregon-Washington Railroad & Navigation Company.

Commissioner Marble: Will you call a witness, Mr. Bracken?

C. F. WRIGHT was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

Mr. Bracken: What is your full name?

Mr. Wright: C. F. Wright.

Mr. Bracken: Are you the Wright of the firm of Ballou & Wright?

Mr. Wright: Yes sir.

Mr. Bracken: In this case?

Mr. Wright: Yes sir.

Mr. Bracken: What is the business of your firm?

Mr. Wright: Distributor of mortorcycles, bicycles and automobile supplies.

Mr. Bracken: And where located?

Mr. Wright: Head office in Portland, branch in Seattle, Washington.

Mr. Bracken: Are you familiar with shipments involved in this complaint?

Mr. Wright: Yes sir.

Mr. Bracken: Were the freight charges paid on them by Ballou & Wright?

Mr. Wright: Yes sir.

Mr. Bracken: And were they charged back subsequently to the shipper?

Mr. Wright: No sir.

Mr. Bracken: Is the business of your firm in motorcycles confined to the handling of any particular brand of motorcycles?

Mr. Wright: The carload shipments are confined to one brand.

Mr. Bracken: And that is what?

Mr. Wright: The Indian, manufactured by the Hendee Manufacturing Company, Springfield, Massachusetts.

Mr. Bracken: What is the average value at the factory to you of the Indian motorcycle?

Mr. Wright: Average cost to us?

Mr. Bracken: Cost to you.

Mr. Wright: It is, approximately, $175.00 to $180.00.

Mr. Bracken: And what is the weight, the average of the machine?

Mr. Wright: They weigh from 300 to 350, average of 330.

Mr. Bracken: How are they shipped, so far as the package is concerned?

Mr. Wright: They are in a crate, all contained in a crate. Do you want the measurements of the crate?

Mr. Bracken: Yes, you may give them.

Mr. Wright: The height, width and length of crate ready for shipment, the width of the crate is 12 inches, the height 37½ inches, and the length 90 inches, and there is nothing outside, it is all inside, those dimensions.

Mr. Bracken: As to the volume of movement of motorcycles handled by your firm, Mr. Wright, have you looked into the question of volume with reference to whether or not the movement is increasing?

Mr. Wright: Yes sir.

Mr. Bracken: What showing have you as to the movement of motorcycles by you from eastern territory for the year 1907?

Mr. Wright: I have the figures before me.

Mr. Bracken: Read them.

Mr. Wright: 1907, fifteen.

Mr. Bracken: Fifteen what?

Mr. Wright: Fifteen—this is motorcycles.

Commissioner Marble: Fifteen motorcycles?

Mr. Wright: Not carloads, motorcycles. 1908, 80. 1909, 148. 1910, 200.

Mr. Fyfe: I think we can shorten this up materially. We will admit that there has been a tremendous increase in the movement of motorcycles all over the country.

Mr. Wright : 1913, 1200.

Mr. Bracken: From a movement of 15 machines up to 1200.

Commissioner Marble: How many in the carload?

Mr. Wright: We have been shipping about 50. The minimum weight has been 15,000 pounds, and we have been putting about 50 in a car, but a car will contain a great many more than that. The factories have been running with short orders, and when they get 50 machines they shoot them into a car and let them come forward.

Commissioner Marble: How much will they weigh?

Mr. Wright: They average 330 pounds apiece.

Mr. Bracken : As to the liability to damage in the transportation of motorcycles, what has been your experience since you have been handling them?

Mr. Wright : We have made practically no claims.

Mr. Bracken: No claims. Since 1907?

Mr. Wright: I don't believe we have met with $100.00 worth of damage in that whole time, and the only damage that there has been at all, has been occasionally a chafed tire, but outside of that we haven't had any claims at all, and in those cases only a partial cost of the tire was collected or asked for.

Mr. Bracken: You handle bicycles as well as motorcycles?

Mr. Wright: Yes sir.

Mr. Bracken : What is the average factory value of a bicycle?

Mr. Wright: The factory value, the average, of a complete bicycle, between $20.00 and $25.00.

Mr. Bracken: And what will a bicycle weigh?

Mr. Wright: Range from 40 to 50 pounds apiece.

Mr. Bracken: They are shipped crated, the same as the motorcycles?

Mr. Wright: Yes, the same form.

Mr. Bracken: What are the outside measurements of a crated bicycle ready for shipment?

Mr. Wright: Crated, 60 inches in width, 36¾ high and 73 inches long.

Mr. Bracken: Have you prepared any figures relative to the average value of a car of motorcycle, as against the average value of a car of bicycles?

Mr. Wright : Well, it will range from—a carload of bicycles you can put 250 in it, into a car, which would mean that a carload of bicycles would be valued at about $6250.00, while, with a carload of motorcycles, probably $8500.00 or $8700.00. Of course there is a difference in the weight. You see, 250 bicyeles will only weigh about

10,000 pounds, which is the minimum weight of the car, while a car of motorcycles will weight 15,000 and over.

Mr. Bracken: Did I understand you correctly as to the value of bicycles at the factory?

Mr. Wright: Yes, complete bicycle.

Mr. Bracken: What value did you say it was?

Mr. Wright: From $20.00 to $25.00. Those bicycyles are shipped, in some instances, stripped without equipment, but I am speaking of the complete bicycle.

CROSS EXAMINATION.

Mr. Fyfe: You said the value of motorcycles is about $175.00 to $180.00. Did I understand you correctly?

Mr. Wright: Our cost.

Mr. Fyfe: Your cost?

Mr. Wright: The distributor's cost.

Mr. Fyfe: Now, the price is usually 20 to 25 per cent off the list price, isn't it?

Mr. Wright: Well, to small agents, yes, but the distributors get a larger discount.

Mr. Fyfe: What is your usual discount from the list, in carload lots?

Mr. Wright: 25 and 10.

Mr. Fyfe: 25 and 10—35. Then, a machine that retails for $375.00 would exceed material—

Mr. Wright: There is no machine retailing for $375.00 in our line.

Mr. Fyfe: In your line. There are motorcycles that retail for $375.00?

Mr. Wright: Not that I know of.

Mr. Fyfe: You stated that the average value of bicycles at the factory is $20.00 to $25.00?

Mr. Wright: Yes sir.

Mr. Fyfe: On what do you base that opinion?

Mr. Wright: I base that on the average of various makes. Of course different factories—there are medium priced bicycles, high priced bicycles and low priced bicycles. Bicycles list from $30.00 to $50.00.

Mr. Fyfe: You would not state that the average value of all bicycles sold in the United States was $20.00 to $25.00 at the factory?

Mr. Wright: I would not be competent to make a statement of that kind. I don't know what is sold all over the United States. A manufacturer of bicycles could answer that better than I could.

Mr. Fyfe: All you know about it is the particular machines that you sell.

Mr. Wright: Yes.

Mr. Fyfe: You know that the catalog houses sell a great many bicycles in this western country, such as Sears-Roebuck?

Mr. Wright: Yes sir.

Mr. Fyfe: At $19.00 retail?

Mr. Wright: Well, they are so-called bicycles, yes.

Mr. Fyfe: They are bicycles, are they not?

Mr. Wright: Yes, they are bicycles.

Mr. Fyfe: They move in material volume, too, do they not?

Mr. Wright: Not in carloads, no sir.

Mr. Fyfe: I mean L. C. L.

Mr. Wright: Not our greatest competitors; they are our smallest competitors.

Mr. Fyfe: Did you ever ship any motorcycles by water?

Mr. Wright: Yes sir.

Mr. Fyfe: Carload lots?

Mr. Wright: Yes sir.

Mr. Fyfe: What rate did you get on them?

Mr. Wright: What rate?

Mr. Fyfe: Yes.

Mr. Wright: $2.50 in any quantity, L. C. L. or carloads.

Mr. Fyfe: How is the selling price fixed here on the coast on motorcycles?

Mr. Wright: How is it fixed?

Mr. Fyfe: Yes, is it a list price of the manufacturer?

Mr. Wright: Yes sir, in most instances; some agents add their freight and some don't.

Mr. Fyfe: If I remember correctly, it was testified in a case at Chicago that it was customary on the Pacific Coast for dealers in retailing motorcycles to add to the manufacturer's list price $15.00 to represent the cost of transportation. Is that your custom?

Mr. Wright: That is done by some dealers, and not done by others.

Mr. Fyfe: Is that your custom?

Mr. Wright: We have been doing that, yes sir.

Mr. Fyfe: Then, any motorcycles that you have sold, you have added $15.00, which has been paid by the purchaser?

Mr. Wright: But that would—

Mr. Fyfe: To the coast?

Mr. Wright: Yes sir.

Mr. Fyfe: He paid the list price as fixed?

Mr. Wright: Yes sir. Excuse me, in figuring the cost value of any article, no matter whether it is a motorcycle or stove or what it may be, freight is always added.

Mr. Fyfe: Then you, yourself, have not paid freight on these, but the freight has actually been paid by the man that purchased it?

Mr. Wright: We have added to the price of our goods—a man in fixing the price of his goods must consider the freight, for the reason that we cannot afford to sell those goods at the eastern list price; we add our freight, add it in any line of goods, no matter whether it be lamps, horns, or anything else, have to consider the freight.

Mr. Fyfe: Then, if this rate is reduced, is not the man that has purchased the motorcycle the man that is entitled to the reduction?

Mr. Wright: He will get the reduction.

Mr. Fyfe: Have you got authority to represent him here and make claim for his account?

Mr. Bracken: That is a question of law that has been passed on a number of times by the Commission and by the Courts.

Commissioner Marble: I wanted to let Mr. Fyfe get enough, so that if he wanted to go to Court on this case he would have the record, that is all—the reason I didn't stop him—or possibly for argument to the Commission that it should reverse its present position.

Mr. Bracken: The $15.00 item referred to in your reply to question by Mr. Fyfe, doesn't that include not only an allowance for freight, but also cost of handling?

Mr. Wright: All handling charges, yes sir.

Mr. Bracken: So that is not a charge made for freight alone?

Mr. Wright: No sir. This price of our goods not only is for freight, but the goods retail for, say, $250.00—a motorcycle that retails for that in the east retails by me for $265.00. That is the price that is tacked on; the customer don't ask how or where that price is arrived at and he is not told. We have to do that on account of the high freight charges. We have had to add to the price of motorcycle horns, because we have had to pay excessive freight charge.

Mr. Fyfe: Then, Mr. Wright, a machine that you pay $180 for, you retail for $265.00?

Mr. Wright: Yes sir.

Mr. Fyfe: And in that $15.00 you add the cost of handling?

Mr. Wright: Why, surely, laid down cost considered in figuring our prices that we are going to get for the machines.

Mr. Fyfe: Then the difference between $15.00 and the $180.00 and $265.00 is your net profit?

Commissioner Marble: That is a fair computation. Is there anything further?

Mr. Fyfe: Nothing further.

(Witness excused.)

Mr. Bracken: I did expect Mr. C. C. Hopkins to testify in the case, but, unfortunately, I haven't got him here, so I will close the case.

COMPLAINANT RESTS.

R. C. FYFE, was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Squires: What is your business?

Mr. Fyfe: Chairman, Western Classification Committee.

Mr. Squires: Your residence is Chicago?

Mr. Fyfe: Chicago.

Mr. Squires: Proceed in your own way and state the facts in reference to this case.

Mr. Fyfe: I desire to dwell on the establishment of the carload rating of first class in Western Classification Committee territory, which became effective June 30, 1913, with a minimum weight of 12,000 pounds, and the same item providing for a mixture with motorcycle side cars.

The first application that the Classification Committee had for a carload rating, was from the Miami Cycle Company, of Middletown, Ohio, in September, 1912. That was prior to the time that the Classification Committee reduced the less than carload rate on the Commission's order from two and one-half times first class to one and one-half times first class, and the Miami Cycle Company petitioned the Committee for a less than carload rating of double first class and a carload rating of one and one-half times first class, 12,000 pounds minimum.

That was followed by applications from the Associated Motorcycle Manufacturers, and the propositions were all consolidated and considered on the April Docket of the Committee Meeting held at St. Louis between

April 1st and April 17th at which time a representative of the Hendee Manufacturing Company, the makers of the Indian motorcycle, Mr. C. F. Dugan appeared and presented a very full argument as to why a carlaod rating should be established, and prayed for first class with a 12,000 pound minimum, which was the basis in effect in the Official Classification territory.

The position of Mr. Dugan was substantiated by the Reading Standard Company, of Reading, Pennsylvania; the Excelsior Motorcycle Company, of Chicago; the Traffic Manager, Mr. Mullett, of the Harley-Davidson Company, at Milwaukee; Mr. E. J. Knight, General Sales Manager of the Aurora Automatic Machinery Company, of Chicago, manufacturers of the Thor; the American Motor Company, of Boston, Massachusetts; The Hendee Manufacturing Company representative had authority to represent the Pope Manufacturing Company, of Hartford, Connecticut.

When that reduction was made by the Committee, I wrote to all these manufacturers as follows:

"I beg to advise that the Committee authorized the publication of first class rating, carload, minimum weight 12,000 pounds, subject to Rule No. 6-B; also authorized loading of motorcycle side cars with motorcycles in carloads."

The reason for putting in the motorcycle side car, was the fact that it would enable the manufacturers to ship more in carloads than they could otherwise do.

In acknowledgment of that letter, Mr. Dugan, Traffic Manager of the Hendee Manufacturing Company, replied:

"We are in receipt of your valued favor of 3d instant, stating that the Western Classification Committee has authorized publication of first class rating on motorcycles in carload, minimum weight 12,000 pounds, subject to Rule No. 6-B, and would advise that we wish to thank you for this reduction and trust that the new rating will work to the mutual advantage of the railroads and the motorcycle manufacturers."

Our contention in this case is, that first class rating, carload, being in effect in the territory in which the machines are manufactured, and which was established by the Commission in Opinion No. 2168, 26 I. C. C., Page 127, and the fact that the manufacturers prayed to the Classification Committee for this rating, that first class is reasonable and just and the Classification should be permitted to apply on all of this traffic.

We further contend that the complainants are not entitled to any reparation or consideration on the past shipments, on account of the fact that the freight paid has been passed along to the ultimate purchaser.

Commissioner Marble: That will be argument.

Mr. Fyfe: And that to do so in this case, to grant it in this case and not in others, would be discrimination.

That is all.

Mr. Squires: What are the transportation conditions, which, in your judgment, make the first class rate reasonable and just?

Mr. Fyfe: Well, taking into consideration the value, the low minimum weight, which by no means represents what could possibly be loaded in a standard car, and the liability to damage.

The reason for establishing the 12,000 pounds minimum in the west—we endeavored to get a higher minimum—was the fact that it was very strenuously objected to by the manufacturers who held up to us the minimum established by the Commission in official territory, and stated that to force a dealer even in the larger cities to take in excess of 12,000 pounds would be putting an extremely heavy burden on the average dealer, and he might be forced to carry over at the end of the year a large stock of motorcycles which, on account of the changes in construction from year to year, would probably be useless to him and have to be sold at a loss.

Mr. Squires: How about the loss and damage question?

Mr. Fyfe: Oh, there are a great many loss and damage claims on motorcycles, I know that to be a fact, right here in this case.

Mr. Squires: More than on bicycles?

Mr. Fyfe: Well, I couldn't say. I never knew of any claims for damage, to my personal knowledge, for the chafing of tires on bicycles. Last July a year ago when out on the Coast hearing the Classification case, I was in Los Angeles and spent three days around the freight houses in Los Angeles, especially in what is known as their "Old Horse Pile." In the Southern Pacific station and in the Santa Fe station there were numbers of motorcycles that were held up waiting adjustment of damages before the consignee would accept delivery. In numerous instances it was chafing of tires; in others it was where the machine had not been fully crated and fully protected, and the motorcycle had slipped through the openings in the crate and had

punctured either the tire or scratched the machine up, or broke some of the spokes in the wheel, or something in that way. The tire question was so serious that when I went back home I got in touch with the principal motorcycle manufacturers of the country and called their attention to the situation and asked that they burlap sufficiently the tires so that they would not chafe through and become damaged in transit. I also suggested several other changes in their crating.

Mr. Squires: What about the question of water competition with reference to bicycles?

Mr. Fyfe: Why, in the Hendee Manufacturing Company complaint, argued by their traffic manager before the Committee, he spoke particularly of the desire to get to the Pacific Coast. He says, "We have got a $4.00 commodity rate out there, but we don't think it ought to be higher than the first class rating of $3.70. We would be satisfied with the $3.70, and we can materially increase our business, I think, even on the Coast and intermediate territory." He said with that carload rating they could make a considerable increase, for the reason that it gives to the jobber a larger profit and it was a greater inducement to him to get out and hustle.

Mr. Squires: Do you think of anything more, Mr. Fyfe?

The bicycle rate is what to the Coast?

Mr. Fyfe: I think the bicycle rate is $2.50. I would not be sure.

Mr. Squires: And that is fixed with reference to water movement, is it?

Mr. Fyfe: I looked into that and conferred with Mr. Countiss, of the Transcontinental Committee, and

he said that that rate was made to meet water competition and it was a water compelled rate.

Commissioner Marble: Why is there any more competition for bicycles than for motorcycles?

Mr. Fyfe: Well, I don't know, except that in the motorcycle business there is a demand for expedited service. The factories are pretty generally always behind in their orders and they want the stuff rushed through.

Mr. Squires: Do you know whether, as a fact, the boats quote a lower rate on bicycles than on motorcycles?

Mr. Fyfe: I couldn't say as to that, but there is an extremely large volume of the motorcycle business that could not possibly go by boat. There is a big plant at Milwaukee, the Harley-Davidson plant; a plant at Aurora, Illinois. The motorcycle is manufactured at Chicago; there is a plant at Miami, Ohio, Reading, Pennsylvania. All those plants are extremely large plants, and would be forced to pay the local of first class, 12,000 pounds, from Chicago to New York to reach the boats. That would be 75 cents a hundred pounds, 12,000 pounds minimum.

Mr. Squires: But that would not be true with reference to manufacturers situated along the Atlantic Coast, in New England, for instance?

Mr. Fyfe: The Hendee people, Springfield, Massachusetts, who ship from Armory, would be the only people who could take real advantage of any water competition there might be.

Mr. Squires: Is there anything further you desire to say with reference to this matter?

Mr. Fyfe: That is all.

CROSS EXAMINATION.

Mr. Bracken: Did you ever know of any bicycles to move by water to the coast?

Mr. Fyfe: Personally, no.

Mr. Bracken: Then your testimony on that score is absolutely hearsay?

Mr. Fyfe: I have, I think, stated—

Commissioner Marble: He stated he was told by Mr. Countiss—he relied on that basis for his testimony.

Mr. Bracken: I thought he was referring to motorcycles.

Mr. Fyfe: No.

Mr. Bracken: The reduction to first class in Western Classification, to which you refer, Mr. Fyfe, was effective and published subsequent to the filing of this complaint, was it not?

Mr. Fyfe: Yes, but it would have been taken up in July, 1912, had not the Classification been under suspension, and there being no meeting of the Committee between January, 1912, and April, 1913.

Mr. Bracken: But, as a matter of fact, it was not published when the complaint in this case was filed with the Commission?

Mr. Fyfe: No sir.

Mr. Bracken: And there was no notice to the public that it would be published?

Mr. Fyfe: No notice to the public? Why, we had application from the motorcycle manufacturers, the subject went on the published docket, of which 1700 copies are scattered all over this country from the Atlantic to the Pacific Coast, which contains a pretty good notice to the public.

Mr. Bracken: You misunderstood my question. I say, until after the filing of this complaint with the Interstate Commerce Commission there was no notice to the public that first class rate was to be established.

Mr. Fyfe: On no.

Mr. Bracken: At the present time, Mr. Fyfe, both the Official Classification and the Western Classification Committees place bicycles and motorcycles both in less than carload and in carload on a parity, is that correct?

Mr. Fyfe: Except in Western territory, you will find that bicycles are carried at 10,000 pounds minimum, I think.

Mr. Bracken: Yes. That is the only difference?

Mr. Fyfe: Yes.

Mr. Bracken: But, other than that, they are absolutely on a parity in both Classifications?

Mr. Fyfe: Yes, from a Classification standpoint we consider that they are analogous and should be properly rated almost alike.

Mr. Bracken: You are more or less familiar with the making of tariffs, aren't you?

Mr. Fyfe: I am.

Mr. Bracken: In addition to the Western Classification work?

Mr. Fyfe: Yes sir.

Mr. Bracken: Would you say that a spread of $4.50 less carload and $4.00 carload a natural spread?

Mr. Fyfe: Why, you will find throughout the Transcontinental Tariff a spread of 50 cents between carload and less than carload rates.

Mr. Bracken: In what tariff?

Mr. Fyfe: The Transcontinental Tariff. You will find thousands of cases of that kind.

Mr. Bracken: I will be glad to hand it to you and have you show me any such instance.

Mr. Fyfe: Well, here is sugar butter, less carload, $1.50, carload, $1.00. Here is brass, bronze and copper goods, $2.00 and $1.50. I say you will find that spread—

Mr. Bracken: But not between $4.00 and $4.50; you have not taken into consideration the percentage of spread at all in your answer, then?

Mr. Fyfe: Oh, no.

Mr. Bracken: Well, would you consider that a natural percentage of spread?

Mr. Fyfe: I would consider that a reasonable spread ordinarily, yes, unless there was some good reason why there should not be or why there should be a greater spread.

Mr. Bracken: Are you at all familiar with the merchandise rates in the T. C. A. Commodity Tariff?

Mr. Fyfe: In the making of them?

Mr. Bracken: No, the rates themselves.

Mr. Fyfe: I have been over the tariff.

Mr. Bracken: Do you know of any carload rate in that commodity tariff, westbound, where it is higher than $4.00 per hundred on any commodity?

Mr. Fyfe: No, I couldn't say that I do.

Mr. Bracken: Now, Mr. Fyfe, Official Classification No. 31, effective in 1908, published a carload rating on motorcycles, second class, while the current Official Classification, I. C. C. No. O. C. 40, provides first class rating in carloads on motorcycles. Notwithstanding the fact that, as you admitted a short time ago, the volume of movement at this time is much greater than it was at that time. How do you account for the advance in the rate?

Mr. Fyfe: I expect they made up their minds they had motorcycles improperly rated at second class.

Mr. Bracken: That is all.

Mr. Fyfe: Evidently that is it, because they went before the Commission and justified first class. We all make mistakes sometimes in our ratings.

Mr. Bracken: Oh yes, there is no question about that. I didn't know but what you knew, because in view of that fact, the natural movement of the rate would be in the other direction. That is all.

(Witness excused.)

PAUL P. HASTINGS, was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Squires: Mr. Hastings, what is your position with the Santa Fe Railroad Company?

Mr. Hastings: Assistant General Freight Agent.

Mr. Squires: Are you familiar with the rate on motorcycles and bicycles?

Mr. Hastings: Yes sir.

Mr. Squires: What have you to say with reference to the water competition that prevails as between the two commodities?

Mr. Hastings: The California lines were recently considering rates on both commodities to both terminal and intermediate points, and I made it a point to, as fully as I could, investigate the water competition. I secured quotations from three water lines doing business between New York and San Francisco, and those quotations were on motorcycles, from the American-Hawaiian, $2.50, and on bicycles $2.00, while the Panama route

were, motorcycles $2.50, bicycles $1.80. F. F. Grace & Company, motorcycles $2.00, bicycles $1.50; showing a difference of from 50 to 70 cents per hundredweight in the quotations made by the water lines.

In addition to that, I found by investigation that the motorcycle business for San Francisco, at least handling by the Santa Fe, had been very largely from the factories as far as Chicago by express, thence the shipments were turned into our through package car which runs direct on our expedited train from Chicago to San Francisco, and make the fastest time of any freight, via the Santa Fe at least, so that I learned the gist of that was, that the motorcycles are so greatly in demand at times that expedited service, even to the extent of express service part of the way, is a material factor with the dealers, and my conclusion was, as a result of those facts just stated, that there was practically no water competition here today on the motorcycles, but that there is water competition on the bicycles, which forces the present rate of $2.50 on the latter commodity.

Mr. Squires: That is all.

CROSS EXAMINATION.

Mr. Bracken: I would like to read to you from the testimony in the case of F. Rice, et al, Docket No. 2789, tried in this city some years ago, at which time Mr. Donnelly, representing the Santa Fe Road, testified for this Commission under cross examination.

Commissioner Marble: What page are you going to read from?

Mr. Bracken: From page 55 of the transcript, under re-direct examination; question by Mr. Camp:

"What, in your judgment, determines the rate on bicycles?"

"Mr. Donnelly: What determines the rate on bicycles?"

"Mr. Camp: Yes. Is that fixed by water competition from the east or how?"

"Mr. Donnelly: I don't think they are."

"Mr. Camp: You don't think bicycles move in here by water?"

"Mr. Donnelly: No sir, not to any extent."

Commissioner Marble: How many years ago was that?

Mr. Bracken: 1909.

Mr. Hastings: My investigation was made in July, 1913, and I am very well satisfied that it represented the present conditions.

Mr. Bracken: And you think, Mr. Hastings, that bicycles actually move by water?

Mr. Hastings: I don't know of any actual movement in carload and I don't know of any in less than carload. I did not intend to qualify. I did find, however, that the bicycle people who get bicycles in carloads expressed themselves as not being in such a hurry for their goods, and they stated that they could maintain the $2.50 rate. We can always get a higher rate, and the Commission understands so, by rail than the water line, as service is better. If we maintain the $2.50 rate they would continue to ship by rail.

Mr. Bracken: Do I understand from your testimony that you found any different conditions as to the water competitive feature as to the rate on motorcycles

on the one hand, as against the rate on bicycles on the other?

Mr. Hastings: Two very strong differences.

Mr. Bracken: What were they?

Mr. Hastings: One difference in the rate, which I quoted, running from 50 to 70 cents a hundredweight, and the other was the difference in the service demanded.

Mr. Bracken: Well, according to your investigation, did you find any actual movement by water of either of the commodities?

Mr. Hastings: I did not.

Mr. Bracken: Then your testimony only runs to quotations made by water lines?

Mr. Hastings: And the statement I got from a wholesale dealer in bicycles who ships in carloads as to his—what his shipments would be.

Mr. Bracken: Isn't it a fact that 90 per cent of the business that moves by water lines goes under contract rate and not published rate?

Mr. Hastings: If it is, the contract rates are lower. I don't know whether those rates I gave you were published; I got the quotations from the water lines. I don't know whether—the American-Hawaiian Line has what it calls tariff. We have not a copy of it.

Mr. Bracken: It is very seldom they adhere to it?

Mr. Hastings: I understand so.

Commissioner Marble: It is not claimed that there is any competition between bicycles and motorcycles so that any question of discrimination would arise?

Mr. Bracken: Yes, but I can prove that by Mr. Hopkins, who is here now.

Commissioner Marble: Do you claim that the lower rate on bicycles hurts the dealer in motorcycles?

Mr. Bracken: Oh, there is no question about it, if the Commission please. There is absolute discrimination.

(Witness excused.)

C. C. HOPKINS, was called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Bracken: Where do you live?

Mr. Hopkins: San Francisco.

Mr. Bracken: What is your business?

Mr. Hopkins: Manager, Hendee Manufacturing Company.

Mr. Bracken: Mr. Hopkins, quite a number of years ago you operated independently in the handling of motorcycles, did you not?

Mr. Hopkins: Yes sir.

Mr. Bracken: How long have you been acting as the San Francisco representative of the Hendee Manufacturing Company?

Mr. Hopkins: Since March, 1910.

Mr. Bracken: You have been handling motorcycles in San Francisco since they first came into commercial use, haven't you?

Mr. Hopkins: Yes sir.

Mr. Bracken: And during that period have you moved any by water?

Mr. Hopkins: Yes sir.

Mr. Bracken: Any considerable number?

Mr. Hopkins: Late in 1911 we had about 150 come out, I think, practically two carloads.

Mr. Bracken: Approximately, how many motorcycles have been handled by you, have been shipped to you from eastern points, per year?

Mr. Hopkins: It has varied greatly. In 1911, it was approximately 600, 1912, 1272, and in the year 1913, 1800—a little over.

Mr. Bracken: What has been your experience as to liability to damage of motorcycles in course of transportation, with respect to the testimony given by Mr. Fyfe on that point?

Mr. Hopkins: Until two years ago I never had a claim.

Mr. Bracken: Until two years ago.

Mr. Hopkins: Yes sir.

Mr. Bracken: From how long ago?

Mr. Hopkins: From 1905.

Mr. Bracken: From 1905 until two years ago you never had a claim?

Mr. Hopkins: No sir.

Mr. Bracken: And then—

Mr. Hopkins: Last year I couldn't tell you the exact amount, and this year it has not been over $100.00 altogether; about $100.00, I estimate it roughly.

Mr. Bracken: Did you hear the testimony of Mr. Hastings with reference to the fact that motorcycles move largely by express?

Mr. Hopkins: Yes sir.

Mr. Bracken: Is that your experience?

Mr. Hopkins: We had four samples come out this year.

Mr. Bracken: Just four?

Mr. Hopkins: Only four.

Mr. Bracken: Out of 1800?

Mr. Hopkins: Yes sir.

Commissioner Marble: Any come by express part way and by freight the balance of the way?

Mr. Hopkins: None whatever.

Mr. Bracken: Mr. Hopkins, in the course of the time that you have handled motorcycles, you have also handled bicycles at times, have you not?

Mr. Hopkins: Not since 1906.

Mr. Bracken: Are you familiar with the line?

Mr. Hopkins: No sir, not at present.

Mr. Bracken: Well, are you in position to say whether or not bicycles compete with motorcycles?

Mr. Hopkins: In what way, in sales?

Mr. Bracken: Well, in usage in any way. Is there any competition in a commercial way between bicycles and motorcycles?

Mr. Hopkins: Why, I would not say that there is any to speak of. I may not be competent, because I am not in the bicycle business.

Mr. Bracken: How many bicycles, if you know, moved by water in 1913? Can you say off hand?

Mr. Hopkins: Only the side car attachments, no machines, no motorcycles.

CROSS EXAMINATION.

Mr. Fyfe: Why did you move the side car attachments by water? Was that on account of the—

Mr. Hopkins: Less than carload rate.

Mr. Fyfe: Three times first class, the less than carload rate formerly carried?

Mr. Hopkins: Two and a half times, yes sir.

Mr. Fyfe: With a rate of first class applicable on the motorcycle and the mixture provided at first class, could you use the all-rail route?

Mr. Hopkins: Why, we did as long as we were getting carloads.

Mr. Squires: Did I understand you to say that you are now shipping motorcycles by water?

Mr. Hopkins: No, we have nothing coming now, only these attachments called side cars.

Mr. Squires: When did you discontinue shipping by water?

Mr. Hopkins: We haven't had any motorcycles come by water this year.

Mr. Squires: Did you have any last year?

Mr. Hopkins: I couldn't say definitely. I think we did, a few small lots.

Mr. Squires: What proportion of your shipments come by water in motorcycles?

Mr. Hopkins: Oh, very small.

Mr. Squires: Very small by water?

Mr. Hopkins: Yes sir.

Mr. Squires: And the bulk of them are shipped by rail?

Mr. Hopkins: Two or three years ago there was a different rate in effect and the water was very attractive at that on that account. Since it has been advanced to $4.00 and $3.70 as long as we can ship carloads we take advantage of that less than carload—we have had two just recently in less than carloads. They were special order.

Mr. Squires: You get a little better service by rail, too, don't you?

Mr. Hopkins: Ordinarily we do, but I have had some steamer shipments come through in almost as good time, 27 to 30 days.

Commissioner Marble: Why don't you ship by water altogether and get the lower rate?

Mr. Hopkins: We do, a great deal of our goods.

Commissioner Marble: These motorcycles, why don't you ship them by water?

Mr. Hopkins: Busy season can hardly wait for them; bought our shipments in carloads since the minimum has been reduced.

Commissioner Marble: Get them more quickly by rail?

Mr. Bracken: That is all. I would like to recall Mr. Wright:

(Witness excused.)

C. F. WRIGHT, previously sworn, was recalled for further examination and testified as follows:

Mr. Bracken: You have already testified that you handle both motorcycles and bicycles. Is there any commercial competition between them?

Mr. Wright: I would say there was, to a certain extent, yes sir. We sold more bicycles before the motorcycle came into existence.

Mr. Bracken: And the coming into commercial use of the motorcycle, has not that decreased the sale of bicycles?

Mr. Wright: I think it has, yes sir.

CROSS EXAMINATION.

Mr. Squires: Why has the introduction of the motorcycle decreased the sale of the bicycles?

Mr. Wright: It is a speedier vehicle, and people don't like to work any more than they have to nowadays.

Mr. Squires: Don't take so much muscle to work it?

Mr. Wright: That is it.

Commissioner Marble: It is not account of the price at which they are sold?

Mr. Hopkins: Well, not so much.

(Witness excused.)

Mr. Squires: That is our case.

Commissioner Marble: I presume you do not desire oral argument. Take the customary time for briefs, 30, 15 and 10 days.

WHEREUPON, at 1:10 P. M. on the 6th day of September, A. D. 1913, the hearing of the above entitled matter was closed.

Bill of Exceptions filed April 18, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 5th day of May, 1916, there was duly filed in said Court and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

Respondents in the above entitled cause and court, conceiving themselves aggrieved by the final order and judgment of this Court made and entered in favor of petitioner on the 21st day of February, 1916, and against the respondents the New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for the sum of $463.10, together with interest thereon at the rate of six per cent per annum from January 1, 1913, and the further sum of $300.00 as a reasonable attorney's fee, and the further sum of $16.00 costs and disbursements aggregating $866.31; and a further judgment in favor of the petitioner and against the respondents The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, and J. M. Dickinson as Receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company for the sum of $206.15, together with interest thereon at the

rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00 as a reasonable attorney's fee, and the further sum of $16.00 costs and disbursements herein, aggregating the sum of $360.96; and a further judgment in favor of the petitioner and against the respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company for the sum of $158.88, together with interest thereon at the rate of 6 per cent per annum from January 1, 1913, and the further sum of $100.00 as a reasonable attorney's fee, and the further sum of $16.00 as costs and disbursements, aggregating the sum of $304.78. And in the ruling and findings of fact and conclusions adopted by the court and in the refusal of the Court to adopt certain findings of fact and conclusions of law requested by respondents in said cause made as set forth in their assignments of error filed herein, petitions said Court for an order allowing said respondents to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignments of error filed herewith, under and in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit in that behalf made and provided, and also that an order be made fixing the amount of security which the respondents shall give and furnish upon said writ of error, and that upon giving such security all further proceedings in this Court be suspended and stayed until the dismissal of said writ

of error by the United States Circuit Court of Appeals, and relative thereto said respondents respectfully show that by reason of the premises manifest error hath happened to the great damage of the respondents herein.

That respondents have filed herewith assignments of error upon which they will rely and will urge in the said Court of Appeals.

WHEREFORE, respondents pray that a writ of error may issue out of the United States Circuit Court of Appeals for the Ninth Circuit to this Court for the correction of the errors so complained of, and that a transcript of record of the proceedings, papers and all things concerning same upon which said judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, to the end that said judgments may be reversed and that respondents severally recover judgment as demanded in their answers.

H. A. Scandrett,
W. W. Cotton,
Charles E. Cochran,
Attorneys for Respondents.

Filed May 5, 1916.

G. H. Marsh, Clerk.

And afterwards, to-wit, on the 5th day of May, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

Come now the respondents above named, appearing by W. W. Cotton, H. A. Scandrett and C. E. Cochran, their attorneys of record, and say:

That the judgment and final order of this Court, made, rendered and entered in the above entitled Court on the 21st day of February, 1916, in favor of the petitioner above named and against the respondents in three groups as indicated in the petition for writ of error, is erroneous and against the just rights of these respondents, and file herein together with their petition for writ of error, the following assignments of error, which respondents aver occurred upon the trial of said cause.

I.

The Court erred in refusing to permit the witness, W. J. Finke to answer the following question:

Q. What sums did you add to that price?

(Meaning the list price prescribed by the manufacturer.)

And further erred in refusing to permit respondents to offer in evidence testimony in substance as follows, to-wit:

That as to all the machines shipped and covered by the facts set forth in the complaint, amounting to substantially 1200 machines, they were all sold for a price $15.00 in excess of the list price, save and except as to about 25 machines, and that that $15.00 was added for

the purpose of covering the freight as assessed by the railroad company, being the rate complained of before the Interstate Commerce Commission.

II.

The Court erred in refusing to permit the witness W. J. Finke to answer the following question:

"Isn't it a fact, in selling each and every of these machines, except the 25, that each customer was told that the $15.00 in excess of the catalogue list price was for the purpose of covering the freight?"

And further erred in refusing to permit testimony in accordance with an offer made at the time as follows:

"That each customer to whom the $15.00 in excess of list price was charged, was told in the regular course of the trade and of the business, that that charge was for the purpose of covering the freight; and that it did cover the freight, leaving a little besides."

III.

The Court erred in refusing to permit the witness W. J. Finke to answer the following question:

"Q. Mr. Finke, isn't it a fact that all of the motorcycle dealers in the western territory, western part of the United States, during the times complained of in this case, followed the same practice and custom that Messrs. Ballou & Wright have followed, in relation to buying the motorcycles f. o. b. factory, paying the freight, adding the freight to the price of the machine to the trade, and recouping themselves in that way?"

And further erred in refusing to permit evidence in accordance with an offer made at the time as follows, to-wit:

That the practice and custom of adding the freight to the price of the motorcycles to the trade was of general application, and was indulged in by all of the standard motorcycle dealers in the West.

IV.

The Court erred in finding as a fact from the evidence the following:

(7) About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its order and decision in said cause set out in the petition herein, and admitted in the answer herein, in which order and decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first class rate in effect at the time said shipments of motorcycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first class rate contemporaneously in effect.

V.

The Court erred in finding as a fact the following:

(8) About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause

wherein the petitioner herein was complaint and the respondents herein were defendants, made, rendered and entered of record its order of reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said order of reparation the said Interstate Commerce Commission, among other things, ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $463.10, with interest thereon at the rate of 6 per cent per annum from January 1, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

VI.

The Court erred in finding as a fact from the evidence the following:

10. The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it exceeded the first-class rate in effect at the time the said shipments were made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount

so charged and collected on said shipments, and the amount petitioner would have paid at the said first-class rate, contemporaneuosly in effect, to wit: in the sum of $463.10, with interest thereon at the rate of 6% per annum from the 1st day of January, 1913.

VII.

The Court erred in finding as a fact from the evidence the following:

14. About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendants, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its Order and Decision in said cause set out in the petition herein, and admitted in the answer herein, in which Order and Decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first-class rate in effect at the time said shipments of motorcycles were made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first-class rate contemporaneously in effect.

VIII.

The Court erred in finding as a fact from the evidence the following:

15. About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of Reparation the said Interstate Commerce Commission among other things ordered that said respondents, the New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $206.15 with interest thereon at the rate of 6% per annum from January 1st, 1913, as reparation on account of said unreasonable rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

IX.

The Court erred in finding as a fact from the evidence the following:

(17) The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipment, was and is unreasonable to the extent that it exceeded the first-class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland,

Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipment, and the amount petitioner would have paid at the said first-class rate, contemporaneuosly in effect, to wit: in the sum of $206.15, with interest thereon at the rate of 6% per annum from the 1st day of January, 1913.

X.

The Court erred in finding as a fact from the evidence the following:

(21) About February 3, 1914, the Interstate Commerce Commission in a cause wherein the petitioner herein was complainant, and the respondents herein were defendant, upon the admissions appearing in the pleadings in said cause, and based upon the testimony offered and admitted therein, made, rendered and entered its order and decision in said cause, set out in the petition herein, and admitted in the answer herein, in which Order and Decision the said Interstate Commerce Commission among other things decided and held that the said commodity rate of $4.00 per cwt. charged and collected by the said respondents from the said petitioner as aforesaid, was unreasonable to the extent that it exceeded the said first-class rate in effect at the time said shipment of motorcycles was made; and that the said petitioner was damaged in an amount equal to the difference between the said amount charged and collected from the said petitioner by the said respondents, and the amount the said petitioner would have paid at the said first-class rate contemporaneously in effect.

XI.

The Court erred in finding as a fact from the evidence the following:

(22) About the 14th day of August, 1914, the said Interstate Commerce Commission in the said cause wherein the petitioner herein was complainant and the respondents herein were defendants, made, rendered and entered of record its Order of Reparation, set out in the petition herein and admitted in the answer of respondents herein, in which said Order of Reparation the said Interstate Commerce Commission among other things ordered that said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, on or before October 1st, 1914, pay unto the said complainant in said cause, the petitioner herein, the sum of $158.88, with interest thereon at the rate of 6% per annum from January 1st, 1913, as reparation on account of said unreasonamle rate charged for the transportation of said motorcycles in carloads from Armory, Mass., to Portland, Oregon.

XII.

The Court erred in finding as a fact from the evidence the following:

(24) The Court further finds that said commodity rate of $4.00 per cwt. charged and collected from the said petitioner by the said respondents on the said shipments, was and is unreasonable to the extent that it ex-

ceeded the first-class rate in effect at the time the said shipment was made, from Armory, Mass., to Portland, Oregon; and that petitioner was and is damaged in an amount equal to the difference between the said amount so charged and collected on said shipments, and the amount petitioner would have paid at the first-class rate, contemporaneously in effect, to wit: in the sum of $158.88, with interest thereon at the rate of 6% per annum from the first day of January, 1913.

XIII.

The Court erred in finding as a fact from the evidence the following:

(27) The Court finds that all of the allegations in the petition herein have been fully sustained and proved by competent evidence.

XIV.

The Court erred in its conclusions of law as follows:

1. That the measure of damages to petitioner herein is the difference between the amount collected by the said respective respondents and paid by the said petitioner on the said respective shipments, and the amount the petitioner would have paid at the said first-class rate in effect at the time the said respective shipments moved, to wit: the said respective amounts hereinbefore stated, in the findings of fact herein.

XV.

The Court erred in refusing to find in lieu of its Conclusion No. 1, the following:

That the measure of damages in this case is not the difference between the rate charged by the respondents

for the shipments complained of in the complaint and the sum which the petitioner would have paid had the rate been assessed in the amount fixed by the Interstate Commerce Commission as reasonable.

XVI.

The Court erred in the following Conclusion of Law:

2. That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, The New York Central & Hudson River Railroad Company, The Michigan Central Railroad Company, Chicago & Northwestern Railway Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company, in the sum of $463.10, together with interest thereon at the rate of 6% per annum from the first day of January, 1913, and the further sum of $300.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

XVII.

The Court erred in the following Conclusion of Law:

3. That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Central New England Railway Company, Erie Railroad Company, Chicago & Erie Railroad Company, Chicago, Rock Island & Pacific Railway Company and J. M. Dickinson as Receiver thereof, Union Pacific Railroad Company, Oregon Short Line Railroad Company and Oregon-

Washington Railroad & Navigation Company in the sum of $206.15 together with interest thereon at the rate of 6% per annum from the first day of January, 1913, and the further sum of $100.00, a reasonable attorney's fee herein, and for its costs and disbursements herein.

XVIII.

The Court erred in the following Conclusion of Law:

4. That the said petitioner is entitled to judgment against the said respondents, The New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, Canadian Pacific Railway Company, Minneapolis, St. Paul & Sault Ste. Marie Railway Company, Spokane International Railway Company and Oregon-Washington Railroad & Navigation Company, in the sum of $158.88, together with interest thereon at the rate of 6% per annum from the first day of January, 1913, and the further sum of $100.00 as a reasonable attorney's fee herein, and for its costs and disbursements herein.

XIX.

The Court erred in refusing to make a Finding of Fact as follows:

4. That between the dates of March 25, 1911, and January 1, 1913, the petitioner shipped from Armory, Massachusetts, to Portland, Oregon, seven carloads of motorcycles weighing 115,503 pounds, and that the freight collected by the respondents was based upon a commodity rate of $4.00 per hundred pounds, which the respondents had published and on file with the Commission, amounted to the sum of $4,620.12.

XX.

The Court erred in refusing to make a Finding of Fact as follows:

6. The Court further finds that the difference between the rate charged petitioner by respondents and the rate fixed by the Commission in said proceedings as being the reasonable rate applicable to and assessable against the transportation of motorcycles from Armory, Massachusetts, to Portland, Oregon, computed upon the number of pounds the shipments of motorcycles weighed that moved under said tariff and within said times in specie would be the sum of $838.13, and that the only way said sums could have been arrived at by the Commission was by measuring the damage by taking the difference between the rate charged by the carrier and the rate fixed by the Commission as being reasonable.

XXI.

The Court erred in refusing to make a Finding of Fact as follows:

7. The Court further finds that the petitioner in respect to motorcycles is a wholesale and retail dealer therein, having a contract with the manufacturer at Armory, Massachusetts, assuring to the petitioner the exclusive right to the sale and distribution of motorcycles in the State of Oregon and portions of the States of Idaho and Washington, and that the manufacturer fixed the retail price by means of public catalogues listing the same at which motorcycles were to be sold to the trade; that Ballou & Wright purchased said motorcycles f. o. b. Armory, Massachusetts, and caused the

same to be shipped and delivered to them at Portland, Oregon, they paying the freight thereon; that Messrs. Ballou & Wright, petitioner herein, did sell each and all of said motorcycles to the trade within their exclusive district at said factory list price, together with the sum of Fifteen (15.00) Dollars additional on each and every motorcycle, which was for the purpose of and did cover the freight chargeable to each motorcycle and based upon said commodity rate of $4.00 per hundred pounds, and at the time each transaction took place in the sale of each motorcycle the purchaser was told in the regular course of the company's business that the said sum of $15.00 was the freight on said motorcycles and that the purchaser was obtaining the same at the factory list price, plus the freight, and that each and all of said motorcycles were sold in the same way; that the said sum of $15.00 did in all cases, save and except to twenty-five motorcycles, cover said freight and leave a small profit besides.

XXII.

The Court erred in refusing to make a Finding of Fact as follows:

9. The Court further finds that in the transaction of the motorcycle business in the purchase and distribution of the same to the trade in the district for which Messrs. Ballou & Wright had the exclusive rights, that they received from the trade sufficient amounts of money to cover the freight as they paid to the respondents, and the profits of petitioner was not in any way affected by said rate complained of.

XXIII.

The Court erred in refusing to make a Finding of Fact as follows:

10. The Court further finds that there is no evidence introduced respecting damages, such as loss of profits, expenses in meeting competition, loss of profits on sales in competitive territory, and under the contract giving Messrs. Ballou & Wright the exclusive agency for certain territory, that there was no competitive territory from which Messrs. Ballou & Wright were excluded.

XXIV.

The Court erred in refusing to make a Finding of Fact as follows:

11. That the amount of freight which Messrs. Ballou & Wright paid upon the entire shipments was the sum of $4620.12; that the amount of money that would have been paid if the freight were assessed at the rate fixed by the Commission as being reasonable would have been the sum of $3781.99, and that the excess charged above the Commission found reasonable rate was the sum of $838.13.

XXV.

The Court erred in refusing to conclude as a matter of law, as follows:

1. That the measure of damages in this case is not the difference between the rate charged by the respondents for the shipments complained of in the complaint and the sum which the petitioner would have paid had the rate been assessed in the amount fixed by the Interstate Commerce Commission as reasonable.

XXVI.

The Court erred in refusing to conclude as a matter of law, as follows:

2. That under the method pursued by the petitioner for the transaction of the business in relation to said motorcycles, the measure of the damage suffered by petitioners is the interest at the legal rate, which in this state is six per cent upon the sum of $838.13, being the difference between the freight computed at the two rates from the time the same were paid to the carrier until the time the same was returned in the due course of business from the trade, but that there is no date or ultimate facts proved by said testimony upon the theory of the petitioner, to which to apply said measure of damage.

XXVII.

The Court erred in refusing to conclude as a matter of law, as follows:

3. That the respondents should have judgment for their costs and disbursements of this action.

XXVIII.

The Court erred in adopting and signing the findings of fact and conclusions of law presented by the petitioner, and erred in declining to sign and adopt the Findings of Fact and Conclusions of Law presented by the respondents.

XXIX.

The Court erred in entering judgment in favor of the petitioner and against the three several groups of

respondents in the manner and form entered, and in refusing and declining to enter judgment in favor of the respondents for their costs and disbursements.

H. A. Scandrett,
W. W. Cotton,
Charles E. Cochran,
Attorneys for Respondents.

Filed May 5, 1916. G. H. Marsh, Clerk.

And afterwards, to wit, on Friday, the 5th day of May, 1916, the same being the 53rd judicial day of the regular March, 1916, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER ALLOWING WRIT OF ERROR.

This 5th day of May, 1916, came the respondents above named, appearing by Messrs. H. A. Scandrett, W. W. Cotton and Charles E. Cochran, their attorneys of record, and filed herein and presented to the Court their petition praying for the allowance of a Writ of Error from the decision and judgment of this Court, made and entered on the 21st day of February, 1916, in favor of the petitioner, above named, and against the respondents, and against the ruling and findings of fact and conclusions of law made on the trial of the above entitled cause, out of the United States Circuit Court of Appeals in and for the Ninth Circuit to this Court, together with certain assignments of error intended to be urged by them within due time, and also praying that a transcript of the record and proceedings and papers upon which said judgment herein was entered, duly authenticated, may be sent to the said Circuit Court of Appeals for the Ninth Circuit, and also praying that an order be made fixing the amount of security which respondents shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit,

and that such other and further proceedings may be had as may be proper in the premises.

Now, therefore, on consideration thereof this Court does allow said writ of error upon said respondents' filing with the Clerk of this Court a good and sufficient bond in the sum of Three Thousand ($3000.00) Dollars, to the effect that if said respondents shall prosecute the said writ of error to effect and answer all damages and costs, if respondents fail to make their plea good, then said bond to be void, otherwise to remain in full force and virtue; said bond to be approved by this court, and it is ordered that all further proceedings in this court be, and the same are hereby suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit, and that said bond shall operate as a supersedeas bond.

Dated this 5th day of May, 1916.

R. S. BEAN,
Judge.

Filed May 5, 1916. G. H. MARSH, Clerk.

And afterwards, to wit, on the 5th day of May, 1916, there was duly filed in said Court and cause, a Bond on Writ of Error, in words and figures as follows, to wit:

BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS, that The New York, New Haven & Hartford Railroad Company, a corporation; Boston & Maine Railroad, a corporation; Central New England Railway Company, a corporation; The New York Central & Hudson River Railroad Company, a corporation; The Michigan Central Railroad Company, a corporation; Erie Railroad Company, a corporation; Chicago & Erie Railroad Company, a corporation; The Canadian Pacific Railway Company, a corporation; The Minneapolis, St. Paul & Sault Ste. Marie Railway Company, a corporation; Spokane International Railway Company, a corporation; Chicago & North Western Railway Company, a corporation; The Chicago, Rock Island & Pacific Railway Company, a corporation, and J. M. Dickinson, as Receiver thereof; Boston & Albany Railroad Company, a corporation; Union Pacific Railroad Company, a corporation; Oregon Short Line Railroad Company, a corporation; Oregon-Washington Railroad & Navigation Company, a corporation, respondents, as Principals, and National Surety Company, a corporation, Surety, are held and firmly bound unto Ballou & Wright, a corporation, the plaintiff above named, in the sum of Three Thousand ($3000.00) Dollars, to be paid to the said Ballou & Wright, its successors and assigns, to which payment well and truly to be made, we bind ourselves, and each of

us jointly and severally, and our and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 2nd day of May, 1916.

WHEREAS, the above named respondents are prosecuting the writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Oregon entered on the 21st day of February, 1916.

Now, the condition of this obligation is such, that if the above named respondents shall prosecute said Writ of Error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation to be void, otherwise to be and remain in full force and effect.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

BOSTON & MAINE RAILROAD,
By C. E. Cochran,
Its Attorney.

CENTRAL NEW ENGLAND RAILWAY COMPANY,
By C. E. Cochran,
Its Attorney.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD CO.,
By C. E. Cochran,
Its Attorney.

THE MICHIGAN CENTRAL RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

ERIE RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

CHICAGO & ERIE RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

THE CANADIAN PACIFIC RAILWAY COMPANY,
By C. E. Cochran,
Its Attorney.

THE MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY,
By C. E. Cochran,
Its Attorney.

SPOKANE INTERNATIONAL RAILWAY COMPANY,
By C. E. Cochran,
Its Attorney.

CHICAGO & NORTH WESTERN RAILWAY COMPANY,
By C. E. Cochran,
Its Attorney.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY AND J. M. DICKINSON, AS RECEIVER,
By C. E. Cochran,
Its Attorney.

BOSTON & ALBANY RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

UNION PACIFIC RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

OREGON SHORT LINE RAILROAD COMPANY,
By C. E. Cochran,
Its Attorney.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY,
By C. E. Cochran,
Its Attorney. *Principals.*

National Surety Company,
Marc Hubbard,
Resident Vice-President.

Attest: M. H. CROWE,
Resident Asst. Secretary.

(Seal, National Surety)
(Company) *Surety.*

Countersigned at Portland, Oregon, this 2d day of May, 1916.

NATIONAL SURETY COMPANY,
By MARC HUBBARD,
Resident Agent.

Examined and approved this 5th day of May, 1916.

R. S. BEAN,
Judge.

Filed May 5, 1916.

G. H. MARSH, Clerk.

And Afterwards, to-wit, on the 28th day of May, 1916, there was duly filed in said court, and cause, a Praecipe for Transcript, in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the above entitled Court:

You will please prepare transcript of the complete record in the above entitled case, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit under the Writ of Error issued to this Court, and include in said transcript the following proceedings, pleadings, papers, records and files:

1. Complaint, omitting title.
2. Answers, including amendments, omitting title.
3. Demurrer to Answer and amendment, omitting title.
4. Order sustaining Demurrer, or a statement that Demurrer was sustained.
   Stipulation waiving jury.
   Reply.
   Findings of Fact and Conclusions of Law.
5. Judgment.
   Findings of Fact and Conclusions of Law proposed by Defendants.
6. Bill of Exceptions and Certificate.
7. Petition for Writ of Error.
8. Assignment of Errors.
9. Order allowing Writ of Error and fixing bond.
10. Supersedeas Bond and Bond for Costs.

11. Writ of Error.
12. Citation on Writ of Error, showing service.
13. Order extending time to file Transcript.
14. Stipulation as to printing record.
15. This Praecipe.

And any and all records, entries, pleadings, proceedings, papers and files necessary and proper to make a complete record upon said Writ of Error in said cause. Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

W. W. COTTON,
H. A. SCANDRETT,
C. E. COCHRAN,
Attorneys for Respondents.

Filed May 25, 1916.

G. H. MARSH, Clerk.

And Afterwards, to-wit, on the 2nd day of June, 1916, there was duly filed in said Court and cause, a Stipulation as to Printing Record, in words and figures as follows, to-wit:

STIPULATION AS TO PRINTING RECORD.

It is Stipulated and Agreed between counsel for the plaintiff and the defendants, that the Clerk of the District Court in printing the record in this cause, shall observe the following directions:

First: The Writ of Error be printed in full, including the title.

Second: All other documents, the title shall be omitted.

Third: The exhibits to the Bill of Exceptions, consisting of pleadings and testimony taken before the Interstate Commerce Commission shall be printed, omitting title.

WILL H. BARD and
JAMES E. FENTON,
Attorneys for Petitioner.
C. E. COCHRAN,
Of Attorneys for Respondents.

Filed June 2, 1916.

G. H. MARSH, Clerk.

UNITED STATES OF AMERICA,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing Writ of Error and in obedience thereto, do hereby certify that the foregoing printed transcript of record, in the case in said court of Ballou & Wright, a corporation, Plaintiff and Defendant in Error, against the New York, New Haven & Hartford Railroad Company and others, Defendants and Plaintiffs in Error, has been prepared by me in accordance with law and the rules of court, and in accordance with the direction of the praecipe for transcript filed in said cause by said Plaintiffs in Error, and that the said transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, designated by the said praecipe to be included therein, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is $....., for printing said record, and that the same has been paid by said Plaintiffs in Error.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this ..... day of August, 1916.

.....
Clerk.